

Newly Printed.

THE *Modern Conveyancer*; Or, *Conveyancing Improved*: being a choice Collection of **PRESIDENTS** on most Occasions. Drawn after the manner of *Conveyancing* now in Use. By the greatest Hands of the present Age; of which some are still living. Consisting of Settlements of Estates upon Marriages, Mortgages, Assignments, &c. With an *Introduction* concerning *Conveyancing* in General, in large 8vo. Printed for J. Walsbøe in Vine-Court, Middle Temple.

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• *LEX CUSTUMARIA:*
OR, A
T R E A T I S E
OF
Copy-hold Estates,

In respect of the { Lord,
 { Copy-holder.

W H E R E I N

The Nature of CUSTOMS in general, and of particular Customs, Grants and Surrenders, and their Constructions and Expositions in reference to the thing granted or surrendered, and the Uses or Limitations of Estates are clearly Illustrated. Admittances, Presentments, Fines and Forfeitures are fully handled, and many Quæries and Difficulties by late Resolutions settled. Leases, Licences, Extinguishments of Copy-hold Estates, and what Statutes extend to Copy-hold Estates are explained.

A N D A L S O

Of Actions by Lord or Tenant, and the manner of declaring and pleading, either Generally, or as to particular Customs; with Tryal and Evidence of Custom, and of Special Verdicts.

T O G E T H E R

With a Collection of many CASES wherein a Copy-holder may receive relief in the Court of *Chancery*.

To which are Annexed,

PRESIDENTS of Conveyances respecting Copy-holds, Releases, Surrenders, Grants, Presentments, and the like. As also PRESIDENTS of Court Rolls, Surrenders, Admittances, Presentments, &c.

By S. C. Barister at Law.

LONDON, Printed by the Assigns of *Richard and Edward Atkins* Esquires, for *John Walthoe*, and are to be sold at his Shop in *Vine Court, Middle Temple*, adjoining to the *Clayster*. 1696.

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LEX GUSTUMARIA:

OR, A

TREATISE

OF

Copyhold Estates,

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THE
OFFICE OF THE
TREASURER
OF THE
UNITED STATES

OF THE
TREASURY
DEPARTMENT
WASHINGTON
D. C.

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**THE
PREFACE
TO THE
PRACTICERS
OF THE
LAW.**

SIR *Edward Coke* in *Bagnal* and
Tucker's Case, in *Brownl. 2 Rep.*
is of Opinion, That the third
part of this Realm is in C^opy-hold.
If we consider the long and con-
tinued Series of Practice that this
Great Man was Conversant in, either
at the Bar or Bench, and to whom
persons from all parts and corners
of the Nation resorted, as to the
Oracle of the Law, we shall not

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easily conceive his Judgment was not Temerarious, but rather that he had good Reason for such positive conjecture: However, it is most certain, That a vast number of Estates (and those considerable too) depend upon no other than Custom, in point of Title, and are no other ways preserved in point of Evidence, then by Copies of *Court Rolls*.

Now we find large and very elaborate Volumes published concerning Estates and Tenures at Common Law, and yet very little hath been professedly wrote upon this Subject, tho' so great a part of the Lands and Estates of this Nation are protected and preserved by it; which I the more wonder at, for that to know when a Custom is good and allowable in Law requires a more than ordinary skill, and amongst the infinity of Customs to try them by, and pertinently

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nently to apply them to those four standing Essentials, *Antiquity, Continuance, Certainty and Reasonableness*, is a Work of great Judgment and Dexterity; besides Constructions and Expositions of Grants and Surrenders, the Penalty and fatal Consequence of Forfeitures under an obstinate Lord, especially such as are wilful, the nicety and variety of Customs, seem very well to deserve a particular and designed Treatise.

I remember but two that have professedly handled this piece of Learning, my Lord *Coke* in his *Compleat Copy-holder*, and Mr. *Calthrop* in his *Readings*, which tho' they are done with good Judgment, yet, as they do totally omit many Titles which are of great Use, so they extend to very few more Cases than those which are amast together in the 4th Report; since

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which we have thousands of Cases Argued and Debated, and some Points started which are *primæ impressionis*; and in truth it is not fit to croud so much excellent Learning, and of such general Use into a *Manual*.

In this Treatise you will find *Totum Domini & Totum Tenentis*. The Lord may see his power (tho' moderated) and the Tenant may understand his Duty and his Privilege. For *Tempora mutantur*; when *Bracton* and *Fleta* wrote, poor Copy-holders *tempestive & intempestive pro voluntate Domini possent resummi & revocari*.

But the Lord now is not Enthroned like a *Grand Seignieur*, whose Proceedings are Arbitrary and his Humors Laws; no, he is a mixt Monarch, he is bound up by the Customs and Constitutions of his little Empire. 'Tis true, they are Tenants *Ad voluntatem Domini*

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Domini, yet this Will is abridged, clogged and restrained *secundum consuetudinem Manerii*.

The Learning of Copy-holds is subtle and curious, in the Arguments and Pleadings. As for the purpose, That great Question, whether and how Copy-holds may be Intayled, has been Argued with great subtilty and penetration, as you may read *Popham, p. 32. Gravenor's Case. Cro. Car. 42. Rowden and Malster's Case. And in Carter's Reports 22. Taylor and Shaw's Case.*

Now the mentioning of this Argument hath presented me with an Answer to what I foresee will be imputed as Faults to me.

In some Cases I am thought too tedious, and write a great part thereof *Verbatim*, and I think I have reason so to do (tho' that is but seldom.) The reason of some Cases will ill bear abstracting; as,
to

The Preface.

to Instance in that Great Man's Reports, I mean my Lord *Hobart* and Mr. Justice *Telverton's* Cases. They that can satisfie themselves with half a Case, let them dabble in those silly Abridgments of *Moor*, *Croke*, &c. I was always of this mind, That in the gelding a close and well compacted Argument, the Vigour of it is in a great measure dwindled and emasculated.

Another Crime perhaps may be, that I cite one Case two or three times; and I do so when I meet with a copious prolifick Case, which brancheth it self into several Points, I thought it more Intelligible and Methodical to Graft each Shoot into its proper Title, whether it be a point in Law, or a Formality in Pleading.

But

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But not to spend time in creating Apologies for Crimes perhaps which I shall never be accused,

Gentlemen, I surrender the whole to your Use, and hope thereby to gain *Admittance* into your favourable Opinion.

The Preface

But not to spend time in crimi-
nating Apologies for Crimes, nor
traps which I shall never be ac-
quainted with.

Gentlemen I present the whole
to your Eyes and hope thereby to
gain Advantages from your favour-
able Opinions.

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Lex Custumaria:

O R, A

TREATISE

O F

Copy-hold ESTATES, &c.

C A P. I.

Of the Original and Nature of a Manor, and of what it consists. Of a Manor Real and by Reputation. Of a Customary Manor. Of Grants and Leases of Manors, with respect to this Subject of Copy-holds; and what shall be said Parcel of a Manor, or what shall be said a Severance.

FOR the right understanding of the Law as to Copy-hold Estates, it's necessary to premise something of the Nature and Notion of a Manor, upon which they depend as the *Materia*, though Custom is the *Form* thereof. And I shall say no more of Manors, than what shall have a direct influence upon the Explication of the nature of Copy-hold.

B

As

Original of
Manors.

As for the Original of Manors, Take this brief Account out of *Perkins*, 670. *Horns Mirror*, Lib. 1. Cap. de *Roy Alfred*. *Fulbeck*, f. 18. *Lambert*, verbo *Thaine*. *Bacon's Elements of the Law*, 41, 42, &c.

The ancient Kings of this Realm, who had all the Lands of *England* in Demefn (that is, in their own Hands, or totally at their own disposal) did grant a certain compass or circuit of Ground upon some great Personages, with liberty to parcel out the Lands to other inferior Tenants, reserving such Duties and Services as they thought fit, with power to keep Courts, where they might redress Misdemeanors, within such their Precincts, and decide Controversies of *meum* and *tuum* within their Jurisdictions; these Lords and Noblemen performing such Services, and paying and yielding such Rents, as the said Kings by their Grants reserved. These Grantees were called Barons, and were such as came to Parliament, and from thence it keeps the name of *Court Baron* to this day, though in process of time, by the Grants of such Barons, these Lands and Manors came into the Hands of meaner Men by Purchase, &c. as it is at this day.

And according to this our Custom, all Lands holden in Fee throughout *France* are divided into Feifs, and Arrear-Feifs; into Feifs or Knights Fees, and Mesne Fees; whereof the former are such as were granted by the King, the second such as the Kings Feudatories do again grant to others.

Now by Justice *Winch*, in his Argument in the Case of *Rowles and Mason*, 2 *Brownlow*, 195. Manors are divided into three sorts of Tenures.

1. The first holds by Knight Service, and this is for defence of the Lord.

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2. The

2. The second holds by Socage, and this is to Plow and Manure the Demesns of the Lord, &c. since turn'd into Rent.

3. The third holds by base Tenure, and these are at the will of the Lord, and these were to do Services, and some had greater Priviledges than others, to encourage them to perform their Services, as it is in *Ireland* at this day. Out of these, by length of time and Custom; sprang up the Race of Copy-holders.

For the Name or Etymology of the word Manor, some fancy it to be *Manerium quasi Manurium*, from manuring the Ground; and then it takes its Name either from the Lords Demesns, which the Tenants are bound to Manure, or from the Lands remaining in the Tenants hands; and others (with more probability) think it to be derived from the French word *Mesner*, to govern or guide, because the Lord hath the government of the Tenants within his Jurisdiction. But that I may come to the thing intended (and to leave the flourish of guess and fancy)

It is a Maxim common in our Books, That a Manor consists of Demesns and Services.

As for the word Demesns, *Dominicum*, or *Domainium*, it is taken it two senses. It is most properly taken for those Lands which remain in the Kings hands, and so all Subjects are excluded from being seized in *Dominico*, and we have little of that now but ancient Demesns Lands, which are such as were in the hands of King *Edward* the Confessor. But in a sense less proper, Demesns Lands may be said to be in the hands of an inferior Lord or Tenant, and as my Lord *Coke* on *Littleton*, f. observes, the form of Pleading shews this difference;

Of what a Manor consists. Demesns, what.

Co. Copy

Pleading.

for an inferior Lord or Tenant never pleads, That he is seized in *Dominico* absolutely, but qualified with this addition, *in dominico suo ut de feodo*; and the word Fee or Feif implies that his Estate is not absolute, but depending on some superior Lord. So that Copy-hold Land may well be parcel of the Demesns, and the Frank-tenements are resting in the Lord, but indeed the customary Inheritance is in the Copy-holder, and he shall plead, That he is seized (with this farther addition) *In Dominico suo ut de feodo secundum consuetudinem Manerij*.

Services.

As for Services, whether Corporeal, Annual, or Accidental, they are Duties accrewing to the Lord by reason of his Seigniory. And respecting Copy-holds, I shall under their proper Titles hereafter speak of Herriots, Forfeitures, Amerciaments and Fines for not doing Suit and Service, and the like.

It was ingeniously said by *Doddridge*, in *Herns and Strouds Case*, *Latch*, 63. That no Case resembles a Manor more than a Rectory: as a Manor is intire so is a Rectory, and the Glebe Lands resemble the Demesns, and the Tythes the Services.

If I let my Manor excepting the Demesns, the Exception is void, *Winch* p. 23.

Description of a Manor.

The New *Expositor* of Law-Terms, describes a Manor, as a thing compounded of divers things; as of an House, Land, Arable, Pasture, Meadow, Wood, Rent, Advowson, Court Baron, and the like; and this ought to be by long continuance of Time, to the contrary whereof Man's Memory cannot occur.

Manor not made at this day.

So that a Manor consists of Demesns and Services, and a Court Baron as Incident, and this must be time out of Memory, for a Manor cannot be made at this day, because a Court Baron

Baron cannot now be made; and a Manor cannot be without a Court Baron, and Suitors or Freeholders, Two at the least; for if all the Freeholds except one Escheat to the Lord, or if he purchase all except one, there his Manor is gone, for that it cannot be a Manor without a Court Baron, and a Court Baron cannot be holden but before Two Suitors at the least. A Court Baron is incident to a Manor, as a Court of *Pye-powders* to a Fair: By the Grant of a Manor *cum pertinentijs*, the Court passeth, and a Man cannot grant his Court, but he may grant the Profits of his Court, 1 *Brownl.* 175. *Browns Case*.

To a Manor, a Court-Baron is incident, and two Suitors at least.

Now though a Man cannot make a Manor at this day, yet he may make Gifts in Tayl, reserving a Tenure and Suit of Court, because, though he may create a Tenure, yet he may not create a Court, and a Court cannot be but with a continuance time out of mind, 35 *H. 8.* *Broke Tenure*, 102.

Yet a Tenure may be created.

A Manor, as I said before, may not be made at this day, neither by a common person, nor by the King himself; and the King cannot make a thing parcel of a Manor at this day; as if he grants Lands to hold of him, as of the Manor of *Greenwich*, by a certain Rent, this Rent is not parcel of the Manor. Yet though a Seigniori or Appendancy cannot be made at this day, yet if an Advowson be Appendancy to a Manor, and the Lord grants part of the Manor with the Advowson to *J. S.* it is now Appendancy to that part, *Cro. El.* p. 39. *Morris and Smith*.

The King cannot make a Manor, or parcel of a Manor at this day.

Advowson appendancy.

In truth, Manors cannot at this day be created but by way of derivation, as being derived out of an ancient Manor, or by act in Law, as in the Case of Copartners. *Vide infra*.

Manor by derivation.

A Manor is
entire.

Manor in re-
putation.

Manor in sus-
pence. *Coke*
Repertory

Joynt-tenants
make partiti-
on of a Ma-
nor, yet both
keep but one
Court.

A Manor is an entire thing, and cannot be divided. If the Lord will transfer over unto a Stranger the Services of all his Tenants, and reserve unto himself the Demesns, or if he will pass away the Demesns, and reserve the Services; Now in both Cases the Lord hath not a Manor really, but nominally only and in reputation; and if I am disseised of a Manor, and the disseisor sever the Demesns from the Services, as it is 4 E. 4. I which have right, ought to make my demand according to my right, and not to take notice of his severance, for to me it is a Manor still.

If a Manor descendeth to Co-partners, and they make partition, and the entire Demesns are allotted to one, and the entire Services to the other, the Manor is now in suspense, for neither hath a Manor but in name only; but if part of the Demesns and part of the Services be allotted to each, then they each of them have a real Manor, 26 H. 4. 8. 6 Rep. 64. *Sir Moyle Finch's Case*. To Explain this, I shall cite a Case or two.

If two Joynt-Tenants make partition this day of a Manor, and each of them hath Demesns and Services, yet each of them hath not a Manor, nor can keep several Courts, but must both keep one Court, *Croke El. p. 39. Morris's Case*.

A. seized of a Manor, whereof part of the Tenants were Freeholders and part Copyholders; had Issue two Daughters, and dy'd; the Daughters entred and made partition of the Demesns only, but the Services of the Freeholders and Copyholders remain'd in Common. By the partition the Demesns are now become in gross, and severed from the Manor; and if partition be made of a Manor so, as the Demesns be allotted to one Sister, and

and the Services to another, now the Manor is dissolved (or rather suspended;) yet if the other Sister dyes without Issue, and her part descendeth to the other, now it is become a Manor again, 1 *Leon. p. 204. Thetford's Case.*

Manor suspended and revived.

By this you see we read in our Books of two sorts of Manors.

1. A real and perfect Manor, such as is before described.

2. A nominal Manor, a Manor by reputation, as you may see by several Instances before. Some call it a Manor in gross; as, a man may have the Right and Interest of a Court Baron with the Perquisites thereunto belonging; but this is improperly called a Manor in a strict sense, and another may have the Scite and every Foot of Land thereunto belonging. And as to this, I will only cite a Case which refers to practice, 6 *Rep. 64, 65. Sir Moyle Finch's Case.* Reputation is sufficient to pass a thing in a Conveyance by the name of a Manor, which is not *re vera* a Manor, yet it ought to be in truth and not reputation, which ought to challenge and hold Priviledge of a Manor, as to have a Court Baron, &c. But a Manor in reputation which is not in truth a Manor, will not pass by the name of a Manor in a Fine or Common Recovery, for they shall not be taken by intendment, *Croke Eliz. 524. Mallet's Case.*

A Manor nominal.

Manor in gross.

Manor in reputation will pass by the name of a Manor in a Conveyance, not in a Fine.

Of Customary Manors.

A customary Manor may be held by Copy, and such customary Lords may keep Courts and grant Copies, and such customary Manor may pass by Surrender and Admittance, 11 *Rep. 17. Sir H. Nevil's Case.* And so it is resolved in *More and Goodgame's Case, Croke*

Pleading.

One Manor
cannot be par-
cel of another.

The Lord
may create a
customary Ma-
nor.

Fac. 327. That within one Manor there may be another Manor demisable by Copy, and within that Manor there may be customary Tenants; for as well as there may be a Tenant at will of a Manor at the Common Law, so there may be a Tenant at will according to the Custom of the Manor. *Vide infra, sub titulo Courts.* But the way of pleading it must be thus. That such a Manor hath been used time out of mind to be granted by Copy, and also that time out of mind, such Grantees had used to hold Court Barons, and to grant Copies of Court Rolls to others, and so to prescribe in this time out of mind, *1 Bulstr. 57. The King and Stafferton. Telv. p. 190. mesme Case.* The Manor of *Haylsham* in the County of *Norfolk*, is held by Copy, and such a Manor by Escheat ceaseth to be a Manor. For by the Escheat the Services be extinct, and one Court Baron only shall be held after the Escheat. But though one Manor may be held of another Manor, yet one Manor may not be parcel of another Manor, and both be in *esse* at the same time; for being Liberties and Franchises of the same nature, *non possunt stare insimul. More's Case.*

Though the Lord by his own act may not make out of one Manor at Common Law, divers several Manors, consisting of Demesns and Freeholds, yet he may well by his own act make a customary Manor, consisting of Copy-holds, and they shall hold Court. As if he grant the Inheritance, or makes a Lease of all his Copy-hold Lands for two thousand years, the Grantee or Lessee may hold Court for the Copy-holders, *4 Rep. 26, 27. Melwyche's Case, and Neal and Jackson's Case. Vide infra, sub titulo Courts.* For they have a kind of Seigniority in gross, and may keep a customary Court where

where the Steward shall be Judge, and shall take Surrenders and make Admittances.

Of Grants and Leases of a Manor, and how Services shall pass, and what and when shall be said to continue as parcel of the Manor, after a Grant or Lease, and what shall be a severance.

A man seized of a Manor, leaseth part of the Demesns for Years or Life, the Reversion remains parcel of the Manor. Reversion.

A man seized of a Manor in the right of his Wife, Leased part of it for Years, without his Wife; the Reversion thereof is not parcel of the Manor. Contrary if the Lease had been made by the Husband and Wife.

By Feoffment of the Manor, the Services do not pass without Attornment, *Lit. 127. 6 Rep. Attornment. Bracebridge's Case.*

If a man make a Feoffment of a Manor in which are Tenants at will according to the Custom, there Services shall pass by the Feoffment, without their Attornment, *Rolls Abridgment 293.*

By a Grant of all the Demesns, the Waste passeth, unless excepted, *2 Keb. 558. North and Howland.*

W. H. was seized of twelve Acres, holden of the Manor of *W.* by Suit and Services, and devised to the Defendant *F. H.* in Tayl, the remainder in Fee. After which *F. H.* purchased the Manor; this being by purchase, maketh not the Land parcel, but by Escheat it doth. *2 Keb. Holmes and Hanby.* But this Case is more clearly Reported by Mr. *Siderfin*, as followeth.

If one who
had Land held
of a Manor, be
Tenant in
Tayl of it, and
the Manor is
given to him,
the Land in
Tayl shall not
pass by Grant
of the Manor.

The Lord of a Manor deviseth to *f. s.* the Manor in Tayl, the remainder over: *f. s.* had twenty Acres in Fee, which were held of the Manor by Suit of Court, and he being so seized of all, conveys the Manor to *A.* in Fee; *Per Cur.* these twenty Acres shall not pass as Demesne of the Manor, for if it pass as part of the Demesne, this ought to have been so time out of memory; and there is a diversity between Land Escheated, which comes in lieu of other Land, and Land purchased as this was, *Siderfin 284. Holmes and Hanby.*

Lands holden in Fee of a Manor, are not parcel of a Manor, but the Rents and Services issuing out of it are parcel of the Manor, *Brook, Manor 2. 22 H. 6. 53.*

Reversion.

If a man let all the Demesne of a Manor for Life, rendring Rent, yet the Reversion is parcel of the Manor, and it shall pass by the grant of the Manor, *Dyer 6. 7 El. 10.*

Attornment.

If a man let ten Acres of the Demesne of a Manor, for ten years, rendring Rent, and afterwards demiseth the entire Manor, by the name of a Manor, &c. for twenty years, to commence at a day to come. An Interest in the ten Acres shall pass to the Lessee of the Manor, after the expiration of the first ten years, although no attornment be by the first Termor, for this shall pass as parcel of the Manor, and not as a Reversion, for the ten Acres were never severed from the Manor, but the Freehold and Fee of it remains parcel and member of the gross and body name of the Manor, *Dyer 18 El. 350. 18. Pl. Com. Bracebridge's Case, 423.*

Without express Grant, the Copy-hold cannot be severed by any distinct reservation or service, yet the entire Manor may be held by
dis-

The Law of Copy-holders.

11

different Services, as to the Demefins, altho' not the Services, as well by the Grant of the King, as of a common person, without dis-joining any part of the Manor, as reservation of one Service on the Grant of the Manor, another on the Advowson. 1 *Keb.* 720. *Lee* and *Boothby*.

How Copy-
hold may be
severed from
the Manor,
and how not.

After partition of a Manor by Coparceners, one party cannot Lease her part by the name of the moiety of the Manor, 1 *Andersf.* 222. Coparceners.

It was cited by *Richardson* and *Huston*, to be one *Hurston's Case*, That an Ejectment cannot be of a Mannor, because there cannot be an Ejectment of the Services; but if they express farther a certain quantity of Acres, it is sufficient, *Hesly*, p. 80. *Norris* and *Isham*. Neither is it safe to bring Ejectment of a Manor, unless the attornment of Tenants be proved, *Hesly* 146. *Warden's Case*. Note.
Ejectment.

Pleadings.

Unum Maner. parcel. alterius, Ra. Entr. 25. 271.
357. *Terre pleded esse parcel del Mannor usq,*
concession' tali die. 1 *Rep.* 431.

C A P. II.

The Notion and Nature of a Copy-hold, as to its Basis and Foundation. How a Copy-holder and Tenant at Will differ. The general Maxims of Copy-hold Estates Explicated, and thereby the ensuing Cases in this Book rendered more easy and intelligible.

THE Stile of a Copy-holder imports three things, according to my Lord Coke *Lit.*

1. *Nomen*, his Name, and that is Tenant by the Copy of Court Roll, not Tenant by the Court Roll, but Tenant by the Copy of Court Roll; and he is the only Tenant in Law which holds by the Copy of any Record, Deed, or Charter, or any other thing; forasmuch as the Title or Estate of the Copy-holder is entred into the Roll, whereof the Steward delivereth him a Copy, thereof he is called a Copy-holder. But by the Custom of Godmanchester in *Huntingtonshire*, they pass their Estates, by writing on wooden Indented Tallies.

2. *Originem* or Commencement, *ad voluntatem Domini*, for originally he was not but a bare Tenant at Will to the Lord. *Quod quis tempestive & intempestive resumere possit pro voluntate sua & revocare*, *Bract.*

3. *Titulum*, his Title or Assurance, *secundum consuetud. Manerij*; for the Custom of the Manor had fixed his Estate, and assured the Land to him, so long as he did the Services and Duries, and performed the Customs of the Manor, 9 *Rep. Comb's Case*.

Although

Although a Copy-holder had not in Judgment of Law, but an Estate at Will, yet Custom had so establish'd and fixt his Estate, that this by the Custom of the Manor is descendible, and his Heirs shall Inherit it, and therefore his Estate is not meerly *ad voluntatem Dom.* but *ad voluntatem Dom. secundum consuetudinem Manerij*, so that the Custom of the Manor is the life and soul of Copy-hold Estates; for without a Custom, or if they break their Custom, they are subject to the Will of the Lord. And by Custom a Copy-holder is to have his Land according to the Custom, as he which had Freehold at Common Law; as you may see by many Cases in 4 Rep. 21. *Brown's Case*.

Copy-hold at Common Law is but an Estate at Will; but the Common Law so takes notice as to establish it by Custom, that there may be a *possessio fratris* of it, and he may have Trespass against his Lord. And as Copy-hold is created by Custom, it is guided by Custom.

A Copy-holder doth not derive his Estate out of the Estate or Interest of the Lord only, for then the Copy-hold Estate should cease when the Estate of the Lord determined; but the Copy-holder is in by the Custom, 4 Rep. 23. a.

Yet it is but a base Estate, and not look'd upon so worthy as Freehold. And therefore in Indictment *sur Stat. 8. H. 6.* of forcible Entry, for expelling one *Syms* from his Copy-hold. The Exception to it was because (*disseisuris*) was not in the Indictment, and yet it is good; for though the Statute 21 Jac. 15. gives restitution of Possession to Tenants for years and Copy-holders, in which there shall be an Entry or Deteiner by force: yet the Statute doth

not

not give an Indictment of forcible Entry of a Copy-hold; but by *Noy* a Copyholder now shall have an Indictment of forcible Entry, but (*disseisvit*) shall not be in it, for no Jury can find that, for it is impossible, because a Copyholder hath no Freehold, but he shall have a *Pleint* in nature of an *Affise* against a Stranger, *Sym's Case, Mich. 2 Car. B. R.*

Note, This Custom goes not to Collateral things; as, Entries upon Condition, *vide* the Chapter of Collateral Incidents, *infra*.

A Copy-hold as to passing Estates, is in many Cases like a Will, and therefore a party shall take by the *Habendums* in the Admittance, which was no party to the Premises. *Vide infra. Tit. Surrender.*

How a Copy-holder and a bare Tenant at Will differ.

Tenant at Will, according to the Custom of the Manor, may have an Estate of Inheritance; but a Tenant by the course of the Common Law, not so. Therefore, if a man seized of Lands (which are not customary) and lets them to another, to have and to hold to him and to his Heirs, at the will of the Lessor, these words (to the Heirs of the Lessee) are void: for if Lessee dyeth, his Estate is absolutely determined, and if his Heir enter, Lessor shall have a good Action of Trespass, *vi & armis*, before any Entry made by him; otherwise of a Tenant according to the Custom of the Manor.

Fealty.

Tenant at Will, who may be put out at the pleasure of the Lord, shall not do Fealty; for to what purpose were it, to swear to do his Customs and Services, when he hath no certain Estate?

Estate? but a Copy-hold Tenant shall do Fealty, which proves he hath a fixed Estate, so long as he observes the Customs of the Manor, *Coke Lit.* 1. 62, 63. And the Copy-holder may justifie against his Lord, and so cannot a Tenant at Will; and he shall have the Aid of his Lord in an Action of Trespass, 1 *Leon.* p. 4.

If a Tenant at Will be Outlawed, his Estate is determind, but a Copy-hold is not forfeited or determind by Outlawry, *Littleton's Rep.* 234.

As for Tenants by the Verge, they are but Copy-holders, and have no other Evidence but by Copy of Court Roll; but they are so called, because when they Surrender, they deliver a little Rod into the Stewards Hand, the which they deliver to the Steward, and he shall deliver the Rod to him that takes the Land in the name of Seisin. It may be any other thing as well as a Rod, according to the Custom, as a single Penny, a Glove, &c.

Maxims of Copy-hold Estates.

1. When there is no Custom to guide Copy-hold Estates, they shall be directed by the Rules of the Common Law. *Vide* this more Explained, *Maxim* 3, 4.

2. Copy-holders have no other Evidence concerning their Tenements, but only the Copies of Court Rolls. This is to be understood of Evidences of Alienation, for a Copy-holder (that comes in by way of Admittance) may have a Release of a right by Deed, and that is sufficient to extinguish the right of the Copy-hold, which he that maketh the Release had, *Lit. Sect.* 75. *Coke Lit.* 60.

A Release of Right by Deed

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3. When

3. When the Custom hath created Estates of Inheritance, and that the Land shall be descendible, then the Law shall direct the descent, according to the Maxims and Rules of the Common Law, as incidents to every Estate descendible; therefore there shall be a *possessio fratris* to make the whole Blood to Inherit before a Son by the second *Venter*; and this shall be tho' the elder dyes before Admittance; but such customary Inheritances shall not have by the Law any other collateral Qualities, which concern not Descents of Inheritance, as other Inheritances at Common Law shall have. Therefore such Copy-hold Inheritance shall not be Assets to charge the Heir; nor shall the Wife be endowed, nor the Husband Tenant by the Courtesie, without special Custom, 4 Rep. 22. b, *Brown's Case*.

4. As well Estates as Descents shall be directed by the Rules of Law, as necessary Consequents upon the Custom (unless there be a special Custom in the Manor; as, *sibi & suis, sibi & assignatis*) may make an Estate of Inheritance. Therefore a Surrender to the use of *A.* without any Limitation, is but an Estate for Life, 4 Rep. 29. *Bunting and Lepingwel*.

5. Copy-hold ought to be *dimissa & dimissibilis*, as it is in *Murrels Case*, 4 Rep. *vide infra*, *Tit. Custom*.

Yet this Rule is not Infallible. For if a Copy-hold Land be in the hand of a Subject, who is after preferred to Dignity Royal, the Copy-hold is extinct; for it is below the Majesty of a King to perform servile Services: and yet after his Decease, the next who hath right shall be admitted, and the Tenure shall be revived in him, 2 *Siderfin* 82.

C A P. III.

Priviledges of Copy-hold Estates. 1. *Priviledges of the Lord.* 2. *Of the Tenant.* 3. *Priviledges of Infants Copy-holders.* 4. *Of Copy-holds in respect of the Kings Prerogative and Priviledge.*

BEfore I come to Treat farther of Copy-holds, I thought it might not be amiss to set down the Priviledges of Copy-holders and Lords, and Prerogative of the King; that so the Student being well settled in these, they need not be mentioned or explicated hereafter, though they may lye here and there scattered in the following Cases.

Priviledges of the Lord.

The Lord may upon Seizure of a Copyhold maintain an Ejectment, till the Heir come to be admitted, 1 Keb. 287. *Pateson and Danges.*

The King shall not have the custody of the Land that the Ideot holds by Copy, for this is no more than an Estate at Will at Common Law; and if the King should have the custody of the Land, he would much prejudice the Lord. Yet alienation made of it by the Ideot, after Office found, shall be avoided, *Coke 4 Rep. 126. Beverly's Case.*

The Lord to have the custody of an Ideot.

Copyhold Lands granted to three, for the Lives of two; if the Tenants *pur auter vie*, dye Living *cestuy que vie*, the Lord shall have it, for
C there

No Occupancy.

The Lord shall have the custody and not the Prochein Amy.

there shall no be Occupancy, 1 *Rolls Abridg.* 511. *Ven* and *Howel's Case*.

The Copy-holder is *surdus & mutus*, the Lord shall have the Custody and not the *Prochein Amy*, for otherwise he should be prejudiced in his Rents and Services, *Cro. Jac.* 105. *Evers* and *Skinner*.

The Lord is Chancellor in his own Court, to dispose of the Estate when the Tenant leaves it uncertain. *Vide infra sub Tit.* Customs in reference to Estates, & *sparsim per tout*.

If a Copy-holder surrender to the use of one, and the Lord refuseth to admit him, no Action of the Case lyeth against him; so if such Copy-holder prays the Lord to hold a Court, and he refuseth. Where a Surrender is to be made to a Tenant of the Manor, if he will not take such Surrender, yet no Action of the Case lyes against him, 1 *Rolls Abr.* 108.

In what capacity the Lord stands in reference to the Copy-holder's Estate.

He is an Instrument of Conveyance upon Surrenders, and a Conveyer himself upon voluntary Grants.

He is Chancellor in his own Court, and may proceed by Bill, *vide infra*.

Of the Priviledges of Copy-holders.

In this Chapter I shall sum up some general Priviledges of Copy-holders, which lye scattered in the several Customs hereafter treated of.

A Copy-holder may make a Lease for a Lease.
year, without Licence of the Lord, *vide* Lease.

Copy-holders of a Manor may have *Solam* *Sola & separa-*
& *separalem pasturam*, in the Soyl of the Lord, *lis pastura.*
and exclude him, 2 *Sanders* 326, 327, 328.

If a man be obliged in a Statute Staple, his Stat. Staple,
Copy-hold Land is not extendible; but *aliter* *Elegit.*
upon a Statute of Bankrupts, *vide* Tit. Grant.
Its not extendible upon *Elegit*. If a Copy-
holder Lease for years by Licence of the Lord,
this is not extendible in the Hands of the
Lessee, *Rolls Abr.* 888. *Picco's* Case.

Copy-holder of Inheritance may dig for
Mines in his Land. So the Parson in his
Glebe, as it seems, *Siderfin*, p. 152. The Lord
of *Rutland* against *Gee*, per *Hobart* and *Warburton*.

Copy-holder may dig for Marle, without any
danger of Forfeiture; but he ought to lay the Digging for
said Marle upon the same Copy-hold Land, Marle.
Winch, p. 8.

A Custom is that the Lord of a Manor may
dig for Coals and open Mines in the Land of
his Copy-holder. It was made a doubt in Coals.
Goodrick and *Gascoin's* Case, if Lessee of the
Manor may have this liberty, and whether
such liberty can pass by Grant of the Manor,
without special words, *Latch*, p. 189.

A Copy-holder may hedge and enclose, but
not where it was never enclosed before, *Winch*,
p. 8.

Note, a difference between Priviledges which
are annexed to the Seignior, and Privi-
ledges annexed to the Tenancy. The first the
Lord may destroy, but not the last: Therefore

If Tenant at Will be Out-lawed, his Estate
is determined; but a Copy-hold is not forfeit- Outlawry.
ed or determined by Outlawry, *Lit. Rep.* 234.
cited to be adjudged in 44 *Eliz.* Yet *vide*

Lex Custumaria: Or,

1 *Leon. p. 99.* Where a Copy-holder is Outlawed, the King shall have the Profits of his Copy-hold Lands, and the Lord hath not any remedy for the Rent.

Fee-Farm
Rent.

If the King grants a Manor in which are Copy-holders in Fee-farm, the Lands or Goods of the Copy-holders are not liable to the Fee-farm Rent, although the Free-hold is, for the Copy-holders are elder than the Rent, being by Prescription: So

Rent by Pre-
scription.

If the King had a Rent by Prescription, out of the Manor in which there are Copy-holders, if the King had not used to Levy this upon the Copy-holds, it seems he cannot charge them, forasmuch as they are in by Prescription also, *M. 12 Jac. B. 2 Rolls Abr. 157.*

Assets.

Copy-hold Inheritance shall not be Assets to charge the Heir, *Popbam 188.*

Copy-holder makes a Lease for years by Licence, and dyes, this shall not be Assets in the Hands of his Executors, *Popbam 188.*

Ayd.

Copy-holder shall have Ayd of the Lord, where the right of the Seigniorie comes in question upon the Issue taken, 21 H. 6. 37. But where he hath Ayd of a Bishop, and after the King hath the Temporalties, he shall not have Ayd of the King, for so the Plaintiff may be perpetually delay'd, 21 H. 6. 37. 39.

Priviledge of Infants Copy-holders; Or Resolutions concerning Infants, in respect of Fines, Admittances, barring Estates, and being bound by Customs or not.

Custom of a Manor is, That if a Copy-hold descends to any man, that Proclamation shall be made at three several Courts, that he shall
come

come in to be admitted, and if he come not in, it shall be a forfeiture to the Lord; yet an Infant shall not be comprehended within this Custom, for he by intendment of Law is not at discretion to make his Claim, 8 Rep. 100. *Letchford's Case*.

Infant not comprehended within the Custom of coming in after three Proclamations.

It seems to be a Rule in Law, An Infant cannot be protected by the Law by his non-age in any Case, but where his Right which he had while an Infant, and descended to him, might have been barr'd and interrupted by non-claim; so in case of forfeiture; the reason of the Rule is, because the Law conceives he will have that knowledge to preserve his right when he is of full Age, *Carter's Rep.* 86. in *Smith and Painton's Case*.

It was holden in *Rummy and Eve's Case*, 1 Leon. p. 100 Pl. 128. If a Copy-holder dyeth, his Heir within Age, he is not bound to come into any Court during his non-age, to pray admittance, or to tender his Fine.

Not bound during his Minority to pray Admittance.

An Infant who surrenders his Copy-hold Land, within Age, may enter at his full Age, without being put to any Suit for it. A Case cited in *Popham* 39. in *Bullock and Dibler's Case*.

Infant Surrenders, he may enter at full Age.

Infant Copy-holder in Fee makes a Lease for years, without Licence, rendring Rent at full Age, he accepts the Rent, and after outs the Lessee. Lessee brings *Ejectment*, and Judgment for Lessee. *Per Cur.* this Lease may be affirmed by acceptance, and such a Forfeiture shall not bind an Infant, 8 Rep. 44. *Noy* 92.

Infant shall not forfeit by making a Lease without Licence. Acceptance at full Age makes it good to Lessee.

Of Copy-holds and Copy-holders, in respect of the King and his Prerogative.

Per Stat. 2 Ed. 6. Cap. 8. Copy-holders shall enjoy their Estates, where the King is intituled

Lex Custumaria: Or,

by Office, though they be not found by Inquisition.

The Statute of Chantries, gives no Copyhold Land to the King, 1 Ed. 6. 14.

The Estates of the Kings Copy-holders, confirmed by Decree in the *Exchequer*, or *Dutchy-Chamber*, shall be good according to the same Decree. Stat. 7 Jac. Cap. 21.

A Popish Recusant shall forfeit all his Copyhold Land, 35 Eliz. Cap. 2.

Whether the King shall have the Copyhold granted in Trust for an Alien.

It was a Question in *Car. 1.* between the King and *Holland*, whether the King shall have a Copyhold, which is granted to one, in Trust for an Alien. The better Opinion seems to be, that he shall, *Styles Rep. p. 20. 37, 75.*

Vide this Case Reported in *Rolls 1. Abr. 194. Tit. Alien.* If an Alien Amy Purchase Copyhold in Fee, in the Name of J. S. in Trust for himself and his Heirs, It was a great Question and much Argued, whether the King shall have the Trust of this Copyhold? but no Opinion given as to this Point; But the Trust being traversed and found for the King, yet Judgment was given against the King, because, by the Inquisition by which this Trust and matter was found, J. S. who was the person trusted, and who had the Estate in Fee in the Law in him, was put out of possession of it by the Inquisition, where the Alien had but the Trust and no possession; and therefore admitting that the Trust should have been given to the King, yet the King may not have the possession by force of this, but ought to have sued to have the Trust executed in a Court of Equity.

Where the King hath no possession by force of the Inquisition.

The King is seized of a Manor in Fee, in which is a Copyhold demisable at Will, according to the Custom of the Manor. The King

King demised this Copy-hold to J. G. for Life, by Letters Patents; J. G. dyes. The great Question was, if it be destroyed, or the King may grant it again by Copy. *Per Cur.* 1. The King need not recite in his Grant that it is Copy-hold, 24 H. 8. 21. 2. That after the Estate for Life determined, the King may grant this House and Land again by Copy of Court Roll: It is otherwise in the Case of a common person. The Rule, That a Custom is an entire thing and cannot be apportioned, shall not bind the King, although it do bind a Common person. The Kings Gifts shall be taken favourably, and not extended to two intents, where there is no necessity for it, as there is not here; and we are not here to intend a collateral intent, and so the Copy-hold is not destroyed; for the Law takes care to preserve the Inheritance of the King for his Successors, and it may be a benefit to the King to have it continue Copy-hold, viz. to have Common, *Stiles p. 266. Cremer and Burnet.*

King need not recite in his Grant that it is Copy-hold.

Copy-holder for Life dyes, the King may re grant.

Kings Grants favourably construed.

If a Bishop, Tenant in Tayl, for Life or Years, lets a Copy-hold, yet this shall not bind the Successor, issue in Tayl, or him in Reversion, to grant this by Copy again; neither shall it bind an Infant Lord of Manor; and the Estates and Possessions of the King, are in like manner under the protection of the Law. And if this Copy-hold should be extinguished, perhaps a common Appendant or Appurtenant would be lost, 2 *Rolls Abr. p. 197. mesme Case.*

Extinguishment.

If the King grants a Manor, in which are Copy-holders in Fee-farm, the Lands or Goods of the Copy-holder are not lyable to the Fee-farm Rent, although the Freehold is, because

Fee-Farm Rent.

the Copy-holders are elder than the Rent, being by Prescription, 2 *Rolls Abridgment*, p. 157.

Loss of Issues.

If the Lord of a Manor lose Issues, being summoned upon a Jury, Process shall issue out of the *Exchequer*, to levy them upon the Lands of the Copy-holders Lessees for Life or Years; for the loss of Issues lyes upon the Land, as an inherent Servitude by the Law, in whose Hands soever it comes, 1 *Rolls Abr.* 157.

Surrender to the King, without other matter of Record.

A Surrender of a Copy-hold to the King, Lord of a Manor was in *Lee and Boothby's Case*, 1 *Keb.* 720. adjudged good, without other matter of Record.

All the Demefn Lands.

The King grants all his Demefn Lands in *W.* his Copy-hold Lands shall not pass: *Aliter* in a common person, 1 *Rep.* 46. *Alton Wood's Case.*

C A P. IV.

The Nature of Custom in general. Maxims of Customs. What things are requisite to make a good Custom. Time out of Memory Explained. What shall be said to be an Interruption of Custom or not. The reasonableness of Customs, how to be judged of. Several particular Customs, Ratione Loci. Of Customs, enabling and disabling. Of Customs and Prescriptions; their difference, and the different manner of Pleading them. The several sorts of Prescription, and how Prescription to be made, and when, and when not, and by whom. And when a Custom shall be said to be pursued or not.

Custom.

The Nature of Custom in general.

A Custom which hath obtained the force of a Law, is always said to be *ius non scriptum*, for it cannot be made or created, either by Charter or by Parliament, which are Acts reduced to Writing, and are always matter of Record: But being only matter of Fact, and consisting in Use and Practice, it can be recorded and registred no where but in the Memory of the People.

For a Custom taketh beginning and groweth to perfection in this manner. When a reasonable Act once done is found to be good, and be-

beneficial to the People, and agreeable to their nature and disposition; then do they use it and practise it again and again, and so by often iteration and multiplication of the Act, it becomes a Custom; and being continued without interruption time out of mind, it obtaineth the force of a Law. So that Custom in the intendment of Law, is such an Usage which hath obtained *vim Legis*, and is *revera*, a binding Law to such a particular place, persons and things wherein it is concerned. *Davis's* Preface to his Reports.

Custom then may be defined a reasonable Act, iterated, multiplied and continued by the People, time out of mind.

Custom in some Cases alters the nature of Freehold, 5 Rep. 84. *Pennyman's Case*, *A fortiori* of a Copyhold, *Hesly*, p. 126, 127. *Turner and Hodges*.

Consuetudo privat communem Legem. Custom is a ground and need not be proved, for the reason of every Custom cannot be shewed, as it was said in *Knightly and Spencer's Case*: But though Custom takes away Common Law, yet Common Law corrects, allows, and disallows both Statute Law and Custom; for if there be repugnancy in Statute, or unreasonableness in Custom, the Common Law disallows and rejects it, as appears in *Dr. Bonham's Case*, 8 *Coke* 27.

Now Custom being the life and soul of Copyhold Estates, I shall in the next Chapter largely treat thereof in the full extent of it.

Maxims of Customs.

1. A Custom shall in construction be taken strictly, and shall not be extended beyond the words

words of it. One intituled himself to a Copyhold in this manner, That within the Manor there is such a Custom, that if one taketh to Wife any customary Tenant of the Manor in Fee, and hath Issue by her, if he over-live the said Wife, he shall be Tenant by the Curtesie. The Case was, he married a Wife, who at the time of the marriage had no Copy-hold; but afterwards, during the Coverture, a Copy-hold descended to her. It was held in Sir *John Savages* Case, cited in *Beal* and *Langly's* Case, 2 *Leon.* p. 208. That no Tenancy by the Curtesie did accrew by the Custom, which did not extend, but where the Wife was a Copy-holder at the Marriage. So a Custom was, If a Copy-holder in Fee dyes, having Issue Three Daughters, the eldest shall have all. The Case was, A Purchaser of a Copy-hold dyes without Issue, having many Sisters, they shall be Coparceners, for the Custom extends only to Daughters. So *Burrough English*, The middle Brother Purchaseth Lands, and dyes *sans Issue*, the eldest shall have it and not the youngest; 2 *Rolls Rep.* 368. So a Custom which goes in bar or deprivation of an Estate, shall be taken strictly, *Carter's Rep.* 87, 88. *Yelv.* p. 1. *Baspool's* Case. Forfeiture of a Copy-hold for Life, shall not forfeit the Remainder. Custom was, If any Copy-holder in Fee Surrender out of Court, and the *Cesty que use* doth not come into Court to take his Copy-hold, after three Proclamations, then the Lord shall seize it, as forfeited: And if a Copy-holder in Fee surrender to the use of one for Life, remainder over in Fee, and Tenant for Life comes not in Court upon the Proclamations, this shall not forfeit the remainder, The Custom shall be taken strictly, being in destruction of an Estate, and it shall

be intended only of a Tenant in Fee, in possession, and not in remainder, 1 *Rolls Abr.* 568. *Baspool* and *Long*. And yet it shall not be taken literally always, as in the common Case. Custom to grant Lands in Fee-simple, yet they may grant in Tayl, for Life or Years; but that stands upon this Rule, *Omne majus includit in se minus*.

2. Customs are to construed according to vulgar apprehension, because Customs grow generally, and are bred and brought up amongst the Lay-gents, therefore they are called *Vulgares Consuetudines*, and they shall be interpreted according to the most effectual operation of the Law, *Stiles* 146.

3. Custom does not trench to things collateral to the Estate; such as Entries for Conditions. Copy-holder by Licence lets the Land for 60 years rendring Rent, upon condition of re-entry; Copy-holder surrenders to *J. S.* in Fee, who demands the Rent, which not being paid, Enters: His entry *per Cur.* is not good, for Copy-hold Land is not within the Statute of Conditions; nor the Surrender of such a Copy-hold, such an Assignee as the Statute intends, he being in only by Custom, is not privy to the Lease made by the first Copy-holder, nor in by him, but may plead his Estate immediately under the Lord, *Yelv. p.* 222. *Brasier* and *Beal*.

4. When a Custom warrants a greater Estate, it warrants a less. The Custom was, That Copy-hold Lands may be granted to any person in Fee-simple; A Grant to one and the Heirs of his Body is within this Custom: So a Grant for Life or Years: And a Fee-simple includes all, 4 *Rep.* 23. The Custom is to grant for one, two or three Lives; A Grant to one *durante viduitate* is good, 4 *Rep.* 29. *Down* and *Hopkins*. *Cro. El. p.* 323. *mesme* Case.

5. Custom

5. Custom of a Manor cannot extend out of a Manor; therefore it ought to appear in Pleading, That the *Locus in quo*, &c. *est infra Manerium*, Hobart, p. 286. Roberts and Young.

6. Custom may enlarge a Grant farther than Common Law; as, *Sibi & suis*. So to one and his Heirs, by Custom may be restrained to particular Heirs, 2 Keb. 158. 174.

7. If a Custom hath a reasonable commencement, it may be good. And therefore a Custom for Copy-holders to have, *solam & separalem pasturam*, may have a reasonable commencement by voluntary Agreement of the Lord with his Copy-holders, to induce them to hold their customary Estates at Will, and bestow their pains and labour in improvement, Sanders 2. p. 326, 327. Robins and Hoskins. Vide Vaughan Rep. North and Coe, good reasons for the contrary Opinion.

8. What may be claimed by Prescription may be good by Custom, and what may have commencement by Grant, may be claimed by Prescription, 2 Sanders 326.

9. A Custom never extendeth to a thing newly created. If there be a Custom within a Manor, That for every House or Cottage two shillings Fine shall be paid; now if the Tenant make two Houses of one, he shall pay no Fine for the new made House; But alteration of Rooms alters not the case in Prescription.

10. Custom is an entire thing, and cannot be apportioned; yet this Rule shall not bind the King. *Vide supra*.

11. *Consuetudo semel reprobata, non potest amplius induci*: As Continuance makes the Custom, so Discontinuance destroys it.

Custom.

What things are requisite to make a good Custom.

Four things are required to make a good Custom.

Antiquity.
Continuance.
Certainty.
Reason.

1. *Antiquity.* Every Custom had a beginning, although the Memory of man doth not extend to it. And this is one of the grand Pillars of Copy-hold Estates: Therefore in pleading, we say such Lands or Tenements are demised and demisable, *A tempore cujus contrarij memoria hominum non existit.* And yet this Rule fails in the Kings Case; *vide supra.* It was said by Rolls Chief Justice in *Pilkington* and *Bagshaw's* Case, *Stiles* 450. That a Custom cannot be urged for a thing that had its beginning since the time of *Richard I.* if a Record can be shewed to the contrary. But what measure of time shall make a Custom, many differ: Some judge it from the time of *Henry I.* to the Stat. of *Merton*, Cap. 8. which appointeth the Limitation in a Writ of Right, and others say otherwise. And by the Statute *W. 1.* the Limitation was from the time of *R. 1.* and these are Limitations as to Writs; but this is since altered by *32 H. 8.* which is reduced to sixty years next before the Teste of the Writ. But the true measure is *Littleton's* Rule, Where a Custom hath been used so long that man's Memory cannot remember the contrary; that is, when such a thing is pleaded that no man then living hath heard or known any proof

What shall be
 said time out
 of memory.

to the contrary; for if there be any sufficient proof of Record or Writing to the contrary, albeit it exceed the memory of any man living, yet it is within the memory of man; and therefore, regularly a man cannot prescribe or alledge a Custom against a Statute, for that is the highest Record, but affirmative Acts do not take away a Custom. If Land hath been demised by Copy for fifty years, and yet some alive remember the same occupied by Indenture, this is not a good Copy, hold: And if Land hath been demised by 40 years by Copy, and none alive can remember the same to be otherwise demised, this is a good Copy. But sixty, or eighty, or an hundred years may make a good Limitation, *Calshrop's Reading. Coke Lit. 114, 115.*

2. *Continuance.* Custom ought to have continuance without interruption, time out of memory; for if it be discontinued time out of memory, the Custom is gone. As if a Copyhold be let by the Lord for life or for years, according to the course of the Common Law, it shall never be demised as Copy-hold, according to the Custom afterwards. *Consuetudo semel reprobata non potest amplius induci*; and as Continuance makes the Custom, so discontinuance destroys it. The Continuance for fifty years is enough to fasten customary Conditions upon the Land against the Lord: And *per Cur.* Though the original Commencement and the customary Interest did commence 10 H. 8. from which time sixty years passed, yet the seizure for a Forfeiture in the mean time interrupted utterly the Continuance from the time which might by the Law have perfected the customary Interest. Within the time of forty seven years, a customary Interest cannot

What shall be said an interruption of a customary Estate, or not:

not be Attached upon the Land, 3 Leon. 107. Tavernor and Cromwel.

If the Lord of a Manor is seized of an ancient Copy-hold for Forfeiture, or by Escheat, and let the same at Will, without Copy, for divers years; this is not any interruption of the customary nature of the Land, but that he may grant it again by Copy. *Ibid.*

Interruption.

If customary Land hath been of ancient time grantable in Fee, and now of late times, for the space of forty years, the Lord hath granted the same for Life only; yet he may, if he please, resort to his ancient Custom, and grant it in Fee, 1 Leon. p. 56. Kemp and Carter.

Customary Land within a Manor hath been grantable in Fee and it Escheats; the Lord may grant the same to another for Life; for the Custom which enables him to grant in Fee, shall enable him to grant for Life; and after the death of Tenant *pur vie*, the Lord may grant the same again in Fee, for the grant for Life was not any interruption of the Custom, 1 Leon. 56. *id.* Case.

3. Certainty. Custom ought to be certain, for *incerta pro nullis habentur*. 13 Ed. 3. Fitzh. *dum fuit infra etatem*, 3. A Writ of *Dum fuit infra etatem* was brought against an Infant, the Tenant pleads a Custom, That when the Infant is within such an Age as that he may count twelve Pence, or measure an Ell of Cloth, that then his Feoffment shall be good; this Custom is adjudged void for the uncertainty. Now the Reasons why an uncertain Custom shall be void, are 1. Because an uncertain thing may not be continued time out of memory. 2. A man cannot prescribe in a thing which may not at the beginning be well granted, and an uncertain thing cannot well com-

Why an uncertain Custom shall be void.

com-

commence by Grant. And if Tenants of a Manor prescribe that they ought not to pay for a Fine to renew their Copy-hold Estates, more than the Rent of two years, but ought to pay the Rent for two years or less; this is not a good Prescription for the uncertainty, for sometimes they are to pay two years Rent, and sometimes less, 2 *Rolls Abridg.* 264, 265. *Green and Berry.*

4. *Reason.* Custom must be reasonable, therefore it must not be against common Right, or purely against the Law of the Land, as is *Littleton's Case*. The Lord prescribes, That there hath been a Custom within his Manor, that every Tenant, who marries his Daughter without Licence of the Lord, shall make Fine, &c. This Prescription is void, it is against the freedom of a Freeman, who is not bound thereto by particular Tenure. *Alit.* if it be upon a special Reservation of Gift of Lands, or Tenure in Villanage, *Lit. Sect.* 209. So in *Sect.* 212. To prescribe that the Lord of the Manor hath used to distrain Cattel Damage feasant, and to retain the Distress, till Fine were made to him for the Damages, at his will: This Prescription is void, for its against reason a man should be Judge in his own Cause. If the Lord will prescribe to have of every Copyholder belonging to his Manor, for every Court he keepeth, a certain Sum of Mony, this is a void Prescription, because it is not according to common Right, for he ought to do it *gratis*, for Justice sake. But if the Lord Prescribe to have a certain Fee of his Tenants, for keeping an extraordinary Court, which is purchased only for the benefit of some particular Tenants to take up their Copy-holds, and such

D like

like, this is a good Prescription, and according to common Right, *Coke, Cop. 81.*

But now to distinguish what Customs are unreasonable and what not, observe these differences.

Every Custom is not unreasonable which is contrary to a particular Rule or Maxim of the positive Law. For its a Rule *Consuetudo ex certa causa rationabili privat communem Legem.* As the Customs of Gavel-kind and Burrough English, are against the Maxim of descent of Inheritance, and the Maxim of Escheat; as in *Kent*, the Father to the Bough, and the Son to the Plow. So the Custom that the Wife shall have the whole for her free Bench, is against the Maxim of Common Law for Dower. These Customs might have a reasonable beginning, where they are not prejudicial to the Common-wealth, nor to the present Interest of any particular person; yet a Custom may be prejudicial to the Interest of a particular person, and reasonable also, where it is for the benefit of the Common-wealth in general, as to make Bulwarks upon another mans Land in time of War, &c. But

Custom, which is contrary to the publick Good, or injurious to a Multitude, and beneficial only to some particular Person; such Custom is repugnant to the Law of Reason, and void *ab initio*, and no Prescription can make it good; therefore the Custom of a Manor was, That no Commoner should put in his Beasts till the Lord had put in his, and it was adjudged void, *2 H. 4. 24.* For if the Lord would never put in his Beast, the Commoners should lose their Common. As to Customs being reasonable or unreasonable, *vide* several more instances in the Argument of *Rolls* and

Mason's Case, 2 Brownl. 86, 88. Customs may be reasonable, *ratione loci*.

Custom is, where Copy-holder had Issue only Daughters, the eldest shall have this for Life, and after her death it shall go to the next Heir Male of the Father, to him and his Heirs, and if no such Heir, then it shall Escheat to the Lord. Copy-holder dyes, his Wife hath it *durante viduitate*, leaving two Daughters, and during this time the eldest dyes; The Question was, if the second Daughter or the Lord by Escheat had the better Title. *Per Cur.* 1. The Custom is good, and the Estate which the Daughter had is an excremental Estate, and not properly a descent. 2. She that was eldest at the time of the death of the Mother shall have it, and not only *Primogenita filia*, *Siderfin*, p. 267. *Newton* and *Shasto*. This Custom was good *ratione loci*, for such Manor is bordering on *Scotland*, where were frequent Invasions.

Several particular Customs in several places.

Borderers on Scotland.

And Feme sole Merchant is good, *ratione loci*, *London*.

Feme Sole Merchant.

The Custom of the Isle of *Man*, That one shall be hanged for stealing a Capon, but not for stealing an Ox, is good.

Isle Man.

In the Manor of *Bemister* in *Dorset*, is this Custom, That a Copy-holder ought to nominate his Successor, otherwise the Land shall Escheat, and it has been allowed to be a good Custom.

Bemister.

So the Manor of *Taunton*, That the Wife of the Copy-holder shall have the Inheritance of her Husband, *Siderfin*, p. 267. *id.* Case.

Taunton Dean.

The Custom of *Millan* in *Norfolk* is, If any Copy-holder will sell his Land, and agree upon the Price, at the next Court the next of his Blood, and if he refuse, any other of his Blood may have the Land. And such like

Millan in Norfolk.

Lex Cusumaria: Or,

Custom there is at *Ham* in *Middlesex*, The next Clivener, which is he that dwelleth next to him, shall have the refusal, giving as much as another will; and he which inhabits on the East, the first, and then the South, &c. 2 *Brownl.* 177.

As for the other Rules of the validities of Customs, as that they ought to be on good Considerations, and beneficial to the Prescriber, as *Calthrop*, and *Cokes Copyholder* treat of, they may be referred to the forgoing Rules.

Now you see there are three supporters of a Copy-hold Custom.

1. Time, and that must be out of the memory of Man; so that Copy-hold cannot begin at this day.

2. That the Tenements be parcel of the Manor, or within the Manor.

Demised and demisable, how understood.

3. That it hath been demised and demisable by Copy of Court Roll; for it need not be demised time out of mind by Copy of Court Roll; but if it be demisable it is sufficient: For Example, If a Copy-hold Tenement Escheat to the Lord, and the Lord keeps it in his hands many years, during this time it is not demised but demisable, for the Lord hath power to demise it again, *Coke Lit.* 58.b.

Customs of Manors are { *Disabling,*
 Enabling.

Disabling is, That the Tenant by a particular Custom shall not be allowed to do that which he might by the general Custom of Manors. As a man may sell Land to whom he will by the general Custom of Manors, yet in some Manors by special Custom he must make an offer to the next of Blood: *Vide supra* Customs, *ratione loci.*

Enabling

Enabling is, where the Tenant by a particular Custom shall be enabled to do that from which he is restrained by the general Custom of Manors. By the general Custom of Manors the granting of Copy-hold Land for more than one year without Licence, is a Forfeiture; yet in some Manors they may do it, and it shall not be a Forfeiture, *Coke Copy-hold.* 79. *Sett.* 33.

You will find Prescription mentioned in the ensuing Cases; therefore it will be of good use a little to open the nature of Custom and Prescription, and to shew how and wherein they agree, and wherein they differ, and also the difference as to Pleadings.

Custom, Prescription, and Usage, are of great Affinity, yet they differ thus:

Custom is where by continuance of time a Right is obtained concerning divers persons in Common.

Prescription is where by continuance of time one particular person obtaineth Right against another, either a Person or Body Politick.

Usage is by continuance of time, and an efficient cause of both.

Limitation is where a Right may be obtained by reason of Non-claim, by the space of a certain number of years, *Caltrrops* Reading.

1. Prescription, is made in the Person, and so the Pleading is, That he and all his Ancestors, &c. Or he and all those whose Estate he hath time out of mind, used to have Common of Pasture in such a place, &c. being the Land of some other, &c. as pertaining to the said Manor. Custom is, a Copy-holder of the Manor of D. doth plead, That within the same Manor there is and hath been such a Custom time out of mind used, that all the Copy-hold-

ers of the said Manor, have and used to have Common, &c. *Coke Lit.* 113. b.

So Custom lyes upon the Land. As, *infra manerium talis habetur consuetudo*, &c. 8 Rep. *Swain's Case*. And such Custom binds the Land, as Gavel-kind, Borough English, &c.

Prescription
ought to have
a Lawful be-
ginning, not
to of Custom.

So is *Coke* 6 Rep. *Gateward's Case*. Prescription is alledged in the Person, and a Custom ought always to be alledged upon the Land; for every Prescription by common intendment ought to have a lawful beginning; but it is otherwise of a Custom; for this ought to be reasonable, and *Ex certa rationabili causa usitata*, but it need not to have an intendment of a lawful commencement; as, Custom to have Land devisable, or of the nature of Gavel-kind, &c. but by common intendment they may not have a lawful commencement by Grant or Agreement, but by Act of Parliament, *Gateward's Case*, 6 Rep.

So 4 Rep. 32. in *Foylston's Case*. Prescription is personal, and is always made in the name of a person certain, and his Ancestors, or of those whose Estate he hath: But Custom is local, and alledged in no person; but that within a Manor, &c. is such a Custom; and this shall serve for those which cannot Prescribe in their own name, nor in the name of a person certain. In *Gateward's Case*, 6 Rep. Defendant justifies in Trespass by Custom, That all the Inhabitants in such an Ancient Messuage, within the Vill of *D. ratione commorationis*, have used to have common of Pasture *in loco in quo*, &c. this is ill pleaded, for in this word, Inhabitants are included Tenants in Fee, for Life, Years, by Elegit, at Will, and also he that hath no Interest, but Habitation only. Now Tenant in Fee ought to Prescribe
in

in his own Name, and the others which have Interest in the name of the Lord, and he that hath no Interest cannot have Common. But there is no one that hath an Interest, be he Tenant at Will, but by good Pleading he may enjoy it. Now Copy-holder in Fee or for Life, may by Custom of the Manor have Common in the Demesns of the Lord of the Manor, but then he ought to alledge the Custom of the Manor to be *Quod quilibet tenens customar. cujuslibet anti qui Mesuagii Customarii, &c.* and not *Quod quilibet Inhabitans infra aliquod antiquum Mesuag. Customar. &c.* And a Prescription for the Inhabitants to be discharged of Tythes by a *Modus*, or Freemen of *London* to be discharged of Wharfage, &c. must be pleaded by way of Custom, and not by way of Prescription, because the Inhabitants or Freemen cannot Prescribe in their persons, and therefore are allowed to lay a Custom for their Discharge, and the nature of the things is not changed, but remains still a Prescription in his kind, though it be allowed to be pleaded by way of Custom, for necessity sake. And in *Gateward's Case*, a thing lying properly in Prescription, as Common did in that Case, being an Interest which must inhere in some body, cannot be pleaded by way of Custom, as there they would have made it for Inhabitants, that are not permanent to Prescribe; but yet Common for Copy-holders in the Lords Soyl, is allowed to be pleaded by Custom, for necessities sake; whereas in the Soyl of another, it must be laid by Prescription in the Lord, and yet the nature of both is a Prescription; but a matter of discharge may be laid by way of Custom, for that is not an Interest but an Exemption;

Tenant in Fee in whose name to Prescribe, in whose name others.

How a Copyholder shall plead.

When a thing must be pleaded by way of Custom, and when by way of Prescription.

Common for Copy-holders in the Lords Soyl must be pleaded by a Custom in the Soyl of another by Prescription.

thus that great man, my Lord *Hobart*, p. 86. in *Day and Savage* his Case.

My Lord *Coke* in the Argument of *Rowls* and *Mason's* Case, makes four differences between Prescription and Custom.

1. In the beginning, *pugnans ex diametro*, for nothing may be good by Prescription, but that which may have beginning by Grant.

2. Prescription is incident to the Person, and Custom to some Place, and holds place in many Cases which cannot be by Grant. As Lands may be devised by Custom: So Gavel-kind and Burrough English, &c. which cannot have their beginning by Grant. But Prescription and Custom are Brothers, and ought to have the same Age, and Reason ought to be the Father, and Congruence the Mother, and Use the Nurse, and Time out of Memory to Fortifie them both.

3. They vary in Quality; for Prescription is for one man only, and Custom for many, if all but one be not dead.

4. They vary in Extent and Latitude; for Prescription extends to Fee-simple only, but Custom extends to all Interests and Estates whatsoever, as appears by the Pleading. Prescription that a Copy-holder of Inheritance may sell the Trees, is not good, but such a Custom is good. Tenant in Tayl for Life or Years cannot Prescribe in a *Que Estate*, nor against the Lord in his Demesns, but they ought to alledge the Custom, and against a Stranger they ought to Prescribe in the name of the Lord, 2 *Brownl.* 198.

Who may
prescribe in a
Que Estate or
not.

In a Manor the Custom was, That every Copy-holder for Life, had Estovers for Fuel, &c. in the customary Lands: Now if the Lord aliens the Woods, &c. in Fee, and after Grant
Copy-

Copy-holders Lands and Houses for Lives, the Grantees shall have Common of Estovers, Pasture, &c. notwithstanding the Severance; but after such Severance of the Waste or Woods, the Copy-holder, when he would entitle himself to Common of Estovers, the Copy-holder shall not plead generally, *Quod infra Manerium præd. talis habetur, &c. consuetudo, &c.* for after the Severance, this Waste or Wood is not within the Manor, but absolutely divided from it; but he shall plead, That until such a time (*viz.*) before the Severance *Talis habebatur & a toto tempore, &c. consuetudo, &c.* and then shew the Severance, as in *Murrel's Case*, 4 Rep. So he must do where the Lord aliens the Freehold and Inheritance of the Copy-holder, *Swain's Case*, 8 Rep.

Common is due to the Copy-holder, notwithstanding Severance by the Lord, and how to be pleaded.

2. It is said a Prescription goeth to one man, and a Custom to many, 1 *Brownl. Rep.* 133. in *Rowls and Mason*; and yet in *Foystons Case*, 4 Rep. the Custom for Common may be applied to one single Copy-holder.

3. The Allegation of a Custom shall serve when it is referred to a thing insensible, as that such Lands are devisable, &c. *Foystons Case*.

There is nothing more common than for the Lord to Prescribe for his Tenants, by Copy in another mans Land, whereas if it be laid in his own, it shall ever be laid by Custom, *Hobart*, p. 286. *Roberts and Young*.

There is a difference between a Prescription for Freehold Land and for Copy-hold Land; for Custom which concerneth Freehold, ought to be throughout the County, and cannot be in a particular place, 45 *Aff.* but Prescription concerning Copy-hold Land, is good in one particular, *Cro. El.* p. 353. *Taverner and Cromwell*.

Difference between a Prescription for Freehold Land and for Copy-hold Land.

4. A Prescription must be in a thing done, and not in *posse*, therefore a Custom that *Quelibet femina vira cooperta poterit deuisare*, her Copy-hold Inheritance to her Husband, is not good, 3 Leon. 83. *Skipwith's Case*.

Interruption
in the posses-
sion in the
right.

To Customs and Prescriptions, these two things are inseparable Incidents, *viz.* Possession or Usage, and Time. Possession must be *Longa, continua & pacifica*. Now observe, a Title once gained by Custom or Prescription cannot be lost by interruption of the Possession for ten or twenty years; but by interruption in the Right. As if a man hath had a Rent or Common by Prescription, unity of Possession of as high and perdurable Estate, is an interruption in the Right, *Co. Lit. 114. b.* And if a man hath Common by Prescription and takes a Lease of the Land for twenty years, the Common is suspended for that time, and after the years ended, he may claim the Common again by Prescription.

1. Personal Prescription, and in that Inhabitants may Prescribe, as for a Way, or matter of Ease or Discharge, *Gateward's Case*.

2. Real Prescription, and this is inherent to the Estate, and this is where a man Prescribeth, That he and all those whose Estate he hath, &c.

Prescription
as to the
Estate of the
Land, and not
to the Land
it self.

3. Local Prescription, not as to Land, but to the Estate, and therefore the Custom was, That the Copy-holder should have Common in the Waste of the Lord; the Lord by Deed confirms to a Copy-holder, to have to him and his Heirs, with its Appurtenances. The Question was, whether his Copy-hold now being destroyed, he shall have Common by the word *Appurtenances*? *Per Cur.* the Common is extinct, and not revived, for this is a local

local Prescription, not to the Land, but only to the Estate, and this proves well the words of the Prescription, for the Copy-holder ought to Prescribe, That every customary Tenant within the Manor, &c. So he hath his Common in respect that he is customary Tenant, and this is in respect of the Estate which he hath by the Custom, and not in respect of the Land, 2 Brownl. 210. *Marsham and Hunter*.

Copy-holder for Life cannot Prescribe against his Lord, but Copy-holder in Fee may, for he hath the Copy-hold in nature of Land of Inheritance, *Stiles* 233. *Cage and Dod*.

Per Cur. a Copy-holder may Prescribe by an *usitatum est* against his Lord, but against a Stranger he must Prescribe in the name of the Lord, *More*, n. 647. 6. Rep. 60.

Copy-holder of Inheritance may Prescribe in the name of the Lord, to be discharged of Tythes, *Noy*, p. 132.

Copy-holders may not Prescribe against their own Lord; *omnino*, nor against any other, but only in the name of their Lord, and the manner of laying it is by a Custom, when they claim any thing or profit out of the Lords Soyl, *vide Sanders* 324, 5, 6. *Hoskin and Roberts*.

Copy-holder for Life may not Prescribe against his Lord.
Copy-holder in Fee may, and how.

What shall be said a pursuance of a Custom or not.

If the Custom be, That the Lord may Demises Copy-hold in Fee, he may Demise them for Life, Years, or in Tayl; for these Estates are included in a Fee, which is greater, 1 Roll. *Abr. Staunton and Barns. Cok. Lit. 52. Vide supra* Maxims and Customs, 4 Rep. 23. The Case of the Manor of *Allesty* in *Warwickshire*.

If

(*Solummodo*)
how expound-
ed.

If the Custom be, That the Lord may *solummodo* Demise his Copy-hold Land in Fee, yet the Lord may Demise this for Life or Years, or in Tayl, though there was never any such Estate made before; for the word *solummodo* is not to be taken so strictly to restrain the Lord of this liberty which the Law gives upon the general Custom; but that he had used *solummodo* to grant in Fee, which doth not take away the liberty which the Law gives, 1 *Rolls. Abr.* 511. *mesme* Case.

Custom is to Grant for one, two, or three Lives, a Grant to one, *durante viduitate*, is within the Custom; for the Estate granted was less than the Custom warranted. The Custom was, That the Wife shall have the Land for term of her Life. The Evidence was, That the Custom was, that she shall have it, *durante viduitate*. *Per Cur.* This Evidence doth not maintain the Custom, 4 *Rep.* 30. *Downe* and *Hopkin's* Case.

A Grant to
three for the
Lives of two
is within the
Custom of
three Lives.

If the Custom be, That Copyholds may be granted for three Lives, a Copy may be granted to three for the Lives of two, within this Custom. For it is no inconvenience to the Lord although it be *pur auter vie*, for there shall be no occupancy of it, but the Lord shall have it, if the Tenants *pur auter vie* dye, living *cestuy que vies*, and this is not a greater Estate than three Lives, but lesser, *Rolls Abr.* 511. *Ven* and *Howel*.

But to one for
Life
Remainder
to another for
Life, &c. is
not good.

A Copy-holder where the Custom was to Demise for three Lives, demised to one for Life, the remainder to such an one as he should marry, and the first Son of his Body; resolved, that both the remainders were void, but the Estate for his own Life is good, *More, n.* 922. *Webster* and *Allen*.

Custom is, when any Tenant sells his Tenement, three Proclamations shall be made the next Court day, and if any of the Blood of the Vendor, will give as much money as the Vendor will, he shall have it. A Tenant in consideration of one hundred pounds in Money, and that the Vendee, being his Physician, had cured him, sold it to him; and the next of Blood at next Court offers a hundred pound, yet he shall not have it, for it was given partly for the other consideration, and the Custom shall be for money only, 1 *Rolls Abr.* 568. So if he had sold it in consideration of a Lease for years, and 1 *d. ibid.*

C A P. V.

Of particular Customs, either enabling or disabling; in respect of the Lord, of the Tenant, and of the Estate, Limited or Leased; and in respect of Descents.

WHAT particular Customs have been adjudged good, or what not; either enabling or disabling Customs, *Vide supra* of Customs, *ratione loci.*

And they may be considered in three respects. $\left. \begin{array}{l} \text{Of the Lord.} \\ \text{Of the Tenant.} \\ \text{Of the Estate.} \end{array} \right\}$

1. *In respect of the Lord and his Priviledge.*

The Wife of the Lord shall not be endowed against a Copy-holder, for the title of Dower is

Dower.

is not consummate before the death of her Husband; so as the title of the Copy-holder is paramount and compleated before the title of Dower, *Leon. 152.*

Waste.

The succeeding Lord shall not take advantage of Waste done in the time of the preceeding Lord, *2 Siderfin, p. 9. Chamberlain and Drake; Vide infra.*

Common.

A Custom, That none shall put his Cattel into the Common before the Lord puts in his, is not good; *Vide supra, the Rules of Customs, 1 Bulstr, Earl of Northumberland vers. Wheeler, 21 Ed. 4. 28 b.*

Fine.

A Custom that a Copy-holder shall upon the change of every Lord pay a Fine, is void; *Vide the Rules of Customs.* For the Lord may change his Manor every day. Had it been that after the death of the Lord he should pay a Fine, it had been good. This was resolved by the Judges in *Serjeants-Inn*, in a Case of one *Armstrong*, referred out of *Chancery.*

Lord cannot grant a Copyhold in Reversion,

The Lord of a Manor cannot grant a Copyhold in Reversion, without a special Custom, *March. Rep. 8.* Whether the Lord of a Manor might grant Copies in the remainder only, with the assent of the Tenants, was a question if it was a good Custom, but not resolved, *3 Leon. 226.*

surdus & mutus,

The Copy-holder is *surdus & mutus*, the Lord shall have the custody, for otherwise he shall be prejudiced in his Rents and Services, and not the *Prochein Amy*, *Cro. Jac. 105. Earvers and Skinner.*

To seize the Estate of a Convict Felon.

Custom was, if a Copy-holder be convict of Felony, the Lord shall seize the Copyhold Estate, it is a good Custom, *1 Leon. p. 1. Bornford and Packington, 2 Brownl. 217. Hitchins and Cooper.*

Custom

Custom was, that if the Tenant did not repair, and it was presented by the Homage, The Tenant shall be amerced, and the Lord shall distrain the Beasts of the Tenant and under-Tenant; a good Custom, *March p. 161. Thorn and Tyler*. For the Custom which gives the distress, knits it to the Land, and so it is not meerly personal; otherwise the Lord by such a devise as this, *viz.* by making the Lease for one year by the Tenant, should be defeated of his Services; and though a Custom cannot extend to a Stranger, yet the under-Tenant is not a meer Stranger, but as a customary Tenant, for he shall have the Priviledges of a customary Tenant, & *qui sentit commodum, &c.* And *transit terra cum onere*. He that shall have the Land ought to undergo the charge: By all the Judges in that Case.

To repair or be presented

Custom cannot extend to a Stranger. Under-Tenant not a meer Stranger.

Customs as to Surrenders, *vide Surrenders*.

Customs as to Forfeitures, *vide sub titulo Forfeitures*.

Customs as to Admittances, Fines, *vide Fines, Admittances*.

Custom, That after the death of Tenant for Life, of a Copy-hold, the Lord is compellable to make the Estate to the eldest Son for Life, and if he hath no Son, to the Daughter, and so *imperpetuum*; this is not a good Custom, but against Law, because the Lord by this Custom is compellable to make a Grant. *Aliter* if it be to make an Admittance, *More, n. 1088*. The Lord Grey's Case.

The Lord not compellable to make a Grant, but he is to make an Admittance.

Customs in respect of the Tenants.

As to Forfeitures, *vide sub titulo Forfeitures*.

As to Surrenders, *vide Surrenders*.

As to Fines, *vide Fines, &c. & Sparsim per tout*.

The

That the Lord
shall have the
Estate of a
Felon.

If he be ac-
quitted.

By-Laws.

The Custom was, if any Copy-holder of a Manor commit any Felony, that he shall forfeit to the Lord his Copy-hold Estate, and that the Lord upon presentment of this by the Homage, may enter and seize the same; its a good Custom: But the Case went farther. *H.* a Copy-holder had killed one *P.* and the same was presented by the Homage, and they find that *H.* was Indicted for the same, and Acquitted; after this acquittal the Lord did enter and seize the Estate as forfeited. But as to that point, the Court gave not any Opinion. 2 *Brownl. Rep. Gittins and Cooper.*

Custom was, That the Steward of a Manor might make Laws and Ordinances for the well ordering of the Common; and to assess a Penalty on those who broke those By-Laws, also to prescribe to Distrain for the Penalty. *Per Cur.* The Custom is reasonable, and the difference is, where the Law or Ordinance takes away the whole profit of the Commoners, and where it abridgeth it only. And the Commoners are bound to take notice of these Ordinances, *March. p. 28. James and Tisney.*

Custom to make By-Laws. And this Law was made, That no Tenant of the said Manor, should put into such a Common, any Steer being a year old or more, upon pain of 6 *d.* for every such Offence, and that it should be lawful to distrein the same. Its avoided by Law, for its against common Right, where a man hath Common for all his Cattel commonable, to restrain him to one kind of Cattel; and had it been that none should put in his Cattel before such a day, that had been good, for this doth not take away, but order the Inheritance, 1 *Leon. 190. Erbery and Latton.*

Custom

Custom was, A Copy-holder for Life may nominate his Successor to have it for Life, and the person nominated to compound with the Lord for the Fine, and if he could not compound, then he should give such a Fine as the Homage should Assess, and should be admitted and hold for his Life, its a good Custom, *Cro. Jac. 368. Ford's Case. 1 Rolls Rep. 125. 195. More, n. 1071. mesme Case. 2 Brownl. 85. Rolls and Mason. Noy Rep. 2. Testmester* Custom. In this he hath a greater Estate than a Sole Tenant for Life.

In Replevin and Avowry for not doing Suit, the Plaintiff sets forth a Custom, That if any Tenant live at a distance, and comes at *Michaelmas*, and pays eight pence to the Lord, and a penny to the Steward, he shall be excused for not attending; and then he said he tendred eight pence, and the Lord refused: if he avers, That there are sufficient Copy-holders that live near the Manor, its good, and tender and refusal by *Hales*, is all one with payment. *Modern Rep. p. 77. Legingbam and Porphiry.* Its a good Custom, this not being a customary Court, but a Court-Baron, where the free Suitors are Judges, *Siderfin p. 361. mesme Case. 2 Keb. 344, 380, 851, mesme Case.*

The Custom was, That after the death of Tenant for Life of a Copy-hold, the Lord is compellable to make an Estate to the eldest Son, for Life, and if he hath no Son, to a Daughter, and so in *perpetuum*. The Justices were of Opinion, that this was against Law, *More, n. 1088. Lord Grey's Case, Vide prius.*

Of Customs in respect of the Estate.

Here I shall recite some few Cases of Customs about Leasing and Limitation of Estates, when good or not.

As to the Custom concerning Leases, *Vide* Leases and Licenses.

As to the Custom of Intailing Copy-holds, and barring them, *Vide sub titulo*, Entails.

As to the Ceremony of Presentment, *vide* Presentment.

Pled. quod si terre sunt concessæ habend. sibi & suis, grantee habet in feodo, Ra. Entries 617. 116, 155.

Pled. quod si terræ sunt concessæ al. 2. pro vitis, ille qui primo nominatus in copia babeat terras solus pro vita, 3 Br. 475. Hern 73, 83, 124, 654, 712.

Simile de terris concessis al. 2. pro vitis in reversione, Co. Entr. 184.

Paying Fine
and renewing
Leases.

The Custom was, That the Land was demisable for twenty one years, paying the treble value of the Rent; and if he dyed within the Term, that the Term should be to his Heir, paying a Fine certain of one years Rent, and if he Assigned the Term, the Assignee should have it paying for a Fine one years value of the Rent, and he who had it might by the Custom renew it for twenty one years, paying three years value, and this was admitted to be a good Custom by the Court, *Croke Jac. p. 671. Page's Case*.

To assign one
to take the
Profits of a
Copy-holder
Infant.

The Custom was, The Lord of a Manor might assign one to take the Profits of a Copy-hold descended to an Infant, during his non-Age, to the use of the Assignee, without rendering an account; it was held to be a good Custom, as a Rent granted to one and his Heir.

to cease during the non-Age of every Heir; and admitting the Custom were void, yet an Action of Account lyes not, for the Defendant hath not entred and taken the Profits as *Prochein Amy*, in which case although he was not *Prochein Amy*, he is chargable as *Prochein Amy*, according to his Claim, but here he claimeth by the Custom and Grant of the Lord, and not in the Right of the Heir, 1 *Leon. p. 266. Case 357. Anonymus.*

The Custom was, That if any one surrender to the use of another, without expressing any Estate, that the Lord may grant it in Fee to him to whose use the surrender was made, its a good Custom, for he is a Chancellor in his own Court to dispose thereof, when the Tenant leaves it uncertain, *Crok. El. 392. Brown and Foster.*

The Lord to dispose the Estate when the Tenant leaves it in Incertalry.

Custom in the Manor of *Sedgely in Com. Staff.* was, If a Copy-holder make a Lease without Licence of the Lord for one year, and dyes within the term, it shall be void against the Heir. *Per Cur.* its a good Custom, for then the Lord may know his Tenant, and the Tenant may have the Estate and pay his Fine. Its void by the act of God; but had the Custom been, That if a Copy-holder within the year surrender his Copy-hold, that the Lease shall be void, this is an unreasonable Custom, *Lit. Rep. 233. Hutton 126, 127. Turner and Hodges.*

Lease to be void if Copy-holder dye within the year.

Custom, That five Copy-holders without Licence (they being seized in Fee) may make any Lease for one year or many years, and when they dye the term shall cease, and the Heir may enter; its a good Custom, *Hutton, p. 101.*

To Lease without Licence.

Custom, That a Lessee for years may hold the Land for half an year after the term ended; its no good Custom, *More, n. 27.*

To hold after the term ended.

Not to alien
without Li-
cence.

To Lease.
without Li-
cence.

For Lessee *pur
vie*, to let for
another mans.
Life.

To commit a
forfeiture, and
so to bar the
Intayl.

Custom, That a Copy-holder shall not alien without Licence, is good, for it may have a lawful commencement by agreement.

A Custom, That on payment of 2 years Rent, the Lord should Licence to let for 99 years, and if he refused, the Tenant might do it without Licence, adjudged a good and reasonable Custom, *Grove and Bridges*, cited in *Porphyry and Legingham's Case*, 2 *Reb.* 344.

A Custom, That Lessee for Life may let for another man's Life, is no good Custom; but the Lord may by Custom Lease the same for Life and forty years after, *More*, n. 27.

A Custom for a Copy-holder, tenant in taylor, to make a Lease for years without Licence, to commit a Forfeiture, on purpose to bar the Intayl, and to transfer the Lands over to any other person, is a good Custom, and is but in the nature of a Surrender or Common Recovery, 2 *Saunders* 422. *Grantbam and Cople*. And the Lord in such cases may not admit any other but him to whom it is appointed by the Tenant making such Forfeiture, and when such *Cesty que use* is admitted, he shall avoid all mean acts or dispositions made by the Lord, as well as upon a Surrender, and this though he was not admitted in the life of the Tenant so forfeiting, *Vide infra Tit. In taylorling Copy-holders*.

In respect of Descents.

The Manor of *Wadburst* in *Com. Suffex*, consisted of two sorts of Copy-hold, *viz.* *Sookland* and *Bondland*, and by several Customs in several Manors; as if a man be first admitted to *Sookland*, and afterwards to *Bondland*, and dyes seized

seized of both, his Heir shall inherit both; but if he be first admitted to *Bondland*, and afterwards to *Sookland*, and of them dye seized, his youngest Son shall Inherit, 1 *Leon. p. 36. Kemp and Carter.*

A. Seized of Copy-hold in Fee, in the nature of Burrough-English, surrenders this into the Hands of the Lord *ea intentione*, That he shall re-grant this to him and his Wife, and to the Heirs of himself, and the Lord re-grants this accordingly. And there is a Custom, That if any person seized in Fee of such customary Lands, and dyes so seized, that the Land shall descend *filio juniore*, &c. And A. having Issue three Sons, and ten years after his death, the youngest Son dyes in the Life of his Mother, without Issue. *Per Jones and Crook*, The elder Brother shall have this as Heir to the youngest, and not the middle Brother, for the Custom may not extend to a collateral Descent, *viz.* to direct the Descent amongst the Brothers, for this is out of the Custom; and the Custom was once satisfied by Descent to the youngest, and there is an end of the Custom, and where Custom fails, Common Law shall guide the Descent. And by this special Custom; he which is youngest Son at the death of the Father shall have the Land, and not he which comes to be youngest afterwards; but *Bramston and Berkly contra*, 1 *Rolls Abr. 624. Reeve and Malster. Vide Maxims of Copy-holds, supra.*

Copy-hold, Burrough-English.

Custom not to extend to Collateral Descents.

Where Custom fails, Common Law guides the Descent.

C A P. VI.

Customs of a Manor as to Wives and Widows of Copy-holders. What are good and what not. As also of Tenancy per le Curtesie. And where the Severance of the customary Tenants from the Manor shall not prejudice.

CUSTOM of Manors, That Husbands shall be Tenant *per le Curtesie*, and the Pleading, *More 171.*

Custom of a Manor is, That the Wife shall have it during her Life; and on Evidence it appears the Custom was, she should have it *durante viduitate*; this Evidence doth not maintain the Custom, because it is a less Estate, *Cok. 4. Rep. 30.*

If the Wife survives she shall have the Fee.

That the Wife of a Copy-holder for Life, may hold it *durante viduitate*, was agreed to be a good Custom; and so the Custom of *Taunton-Dean*, That if a Copy-holder in Fee marries a Wife, if the Wife survives she shall have the Fee, & *sic e converso*, agreed to be good, *Noy Rep. p. 2.*

Lease made before admittance.

There can be no Dower nor Tenancy by the Curtesie of the Copy-hold, unless by special Custom, 1 *Anderson 292.*

A man may be Tenant by the Curtesie by Custom. Though the Husband enter into the Land in the right of the Wife, before admittance, and the Wife dyes before admittance, his Lease shall be good, 1 *Anderson 192. Ewer and Astwick.*

It was admitted by the Court to be a good Custom, That an Executor or Administrator shall

shall have an year in the Land of the Copy-holder, against the Wife that claims her Free-Bench, *Noy, p. 29. Remington and Cole.*

Custom, that the Executor shall have an year in the Copy-hold.

If a Woman be Dowable of Copy-hold by Custom, if the Husband after the marriage makes a Lease for years, good by the Custom, the Tenant in Dower shall not avoid it, but it shall precede the Dower, *More, n. 147. Holder and Fairly.* For he comes under the Custom as well as the Feme.

Tenant in Dower shall not avoid a Lease made by the Husband.

The Custom of a Manor was, *Quod quilibet tenens per Copiam poterit dimittere terras suas purvie*, or in Fee, or in Tayl, and that a Woman *cooperta viro poterit devisare* her Copy-hold Land to her Husband or to any other, by the assent of her Husband. *Per Cur.* The Custom is not unreasonable: But because it was *poterit devisare* which is a word of justification, and it should have been *usi sunt devisare*, by way of excuse; it was adjudged against the Plaintiff, *More, n. 268.* And so was one *Welsh's Case*, in *C. B. 41 El. 3 Leon. p. 81. Skipwith's Case.*

Custom, that the Wife Feme covert may Devise.

The Custom was, That Widows should enjoy during their Widow-hood. The Lord Grants a customary Tenement of the Manor unto *J. B.* for Life, by Copy and after conveys the whole Manor to *W.* who conveyed the Inheritance and Free-hold of *B's* Tenement for money paid by *B.* to *J. S.* and others, and their Heirs, during the Life of *J. B.* the remainder to *Ellen*, then Wife of *J. B.* the remainder to *J. B.* in Fee. *J. B.* Grants his remainder in Fee to his Son and his Heirs. The Son having Issue a Son, dyed, and then *Ellen* dyed. *J. B.* marries *Frances*, and dyes seized of his customary Estate. *Frances* shall enter and enjoy her Widows Estate; for it is clear, That the customary Estate of *J. B.* remained as it was during his Life, not

Where the severance of the customary Tenants from the Manor shall not prejudice the Widow in her customary Estate.

extinct nor altered by the purchase of the Fee-simple, which during his Life was in others, not in him; and then it follows by consequence, That all customary Incidents to such a customary Estate remain, whereof this is one, which by Custom and Law grows of it self out of that Estate, as a Descent should have done if J. B. had been a Copy-holder in Fee, and the Freehold had been granted to another in Fee, *Hobart*, p. 181. *Howard and Bartlet*. It is not in the power of the Lord to destroy Widows Estates. By the severance Incidents to the Tenancy are not destroyed, but Incidents to the Seigniorie are.

The Law vests the Estate in a Woman that is to hold *durante viduitate* before admittance.

The Custom is, That a Woman shall hold *durante viduitate*, she shall make a Lease before admittance, for in that case there is no Fine due to the Lord, and the Law vests the Estate in her, *Noy* 29. *Remington and Cole*. *Hobart* 181. *Vide* Admittance.

The Lord Enfeoffs the Copy-holder; this destroys Free-Bench.

A Custom of a Manor was found to be, That if a Copy-holder in Fee dyes seized, his Wife should hold it during her Life, as Free-Bench; the Lord Enfeoffs the Copy-holder, who dyed seized. *Per Cur.* she shall not hold her Free-Bench; *aliter*, if the Lord had enfeoffed a Stranger of that Land, yet the Land remained Copy-hold, and the Custom is not taken away, *Crok. Jac.* 126. *Lashmer and Avery*.

Damages recovered in Dower.

A Woman recovered Dower in the Lords Court, and 40 l. because her Husband dyed seized, and she brought Debt for the Damages in the Kings-Bench. *Per Cur.* The Action lyes not, because the Court-Baron could not hold Plea, nor award Execution of 40 l. Damages, although the Damages were there well assessed, *More*, n. 559.

If a Feme Copy-holder holds the Land *durante viduitate*, and then takes Husband, the Lord shall have the Corn, *Oland's Case*. *Vide Emblements*.

The Widows customary Estate is due to her, though there was a Divorce *a mensa & thoro*, *Divorce*. *Hobart*, p. 181. *Howard* and *Bartlet*.

Tenant of a Copy-hold for Life, in which the Custom was, That the Wife should have her Widows Estate, and the Husband was attaind of Felony and Executed. The Question was, whether she should have it? *Winch*, not without a special Custom. *Winch Rep.* 27. *Allen* and *Branch*. Whether the Widow attaind for Felony shall have her Estate of viduity.

That the Wife shall not have her Dower, except she claim it within a year and a day; its said to be a good Custom, 3 *Leon.* p. 226. The Wife to claim her Dower within a year and day.

Pleadings.

Custom. *Quod Uxores habeant Tenementa custumaria durante viduitate sua*, *Dyer* 192.

3 Br. 403, 476. *Hern* 73.

Quod Uxores Tenen. custumar. in feodo habeant pro vita Tenementa unde viri obierunt seiscita. Et si viri dimiser. tunc revers. & reddit, *Cok. Ent.* 123.

C A P. VII.

Custom as to Timber, Woods and Under-Woods; and what Prescription by a Copy-holder to cut Trees shall be good or not.

TENANT by Copy of Court Roll cannot by the Common Law take Trees for House-bote, Hedge-bote and Cart-bote, &c. as Tenant for Life or Years may do, who have an Estate certain; but a Copy-holder by special Custom may do it, *Cro. El. p. 5. Lord Mountague* against *Sheppard*.

Where a Custom was alledged to be, That every Copy holder may cut down Trees at his pleasure, this Custom is against Common Law *Winch, p. 1.*

If a Custom be, That a Copy-holder may not cut down Trees, it is good or not good with this difference: If he be a Copy-holder of Inheritance, such a Custom is good; but if he be a Copy-holder for Life, its not good, *1 Bulstr. 150. Earl of Northumberland* against *Wheeler*. The Tenant prescribes to cut and dispose all the Trees upon his Tenancy, its an ill Prescription. *Aliter* of a Copy-holder of Inheritance, *Noy, p. 2.* So it is adjudged in *1 Rolls Abr. 650. Glascock and Peche*. Its a good Custom, That Copy-holder in Fee may cut Trees and sell them at his pleasure; *aliter* of a Copy-holder for Life, *Rook and Higgins's Case Ibid.*

Copy-holder
in Fee may
cut Trees and
sell them by
Custom.

Queen *Eliz.* Seized of the Manor of *H.* in Fee, demised the same to *J. W.* except *Omnia nibus boscis subboscis arboribus & maremissis, &c.*

Habend. for twenty one years; He 35 *Eliz.* Assigns his Interest to *J. P.* and others. Queen *Eliz.* dyes, King *James* grants to *F. S.* and *W.* *reversionem præd. ac premissa sic ut prefertur except.* to them and their Heirs, the Lessees Attorn; afterwards *F.* and *W.* by Deed release to *S.* and his Heirs. And at a Court held by the Lessees their Steward grants by Copy to *W. B.* Def. certain of these Copy-hold Lands, on which Oaks and Ashes grew, for term of Life, *secundum consuetudinem Manerij*; and that there is such a Custom, That every Copy-holder Tenant for Life, used to take all Trees growing upon his Copy-hold, to be employed for Fuel, Bounds, Fences. The doubt was, in as much as the said Lessees hold the Court by virtue of the said Lease of the Manor (out of which Lease the said Trees were excepted) if the Tenant may shroud them, &c. *Per Cur.* 1. Notwithstanding the Severance by the Exception, and notwithstanding the Tenant comes in by Voluntary Grant for Life; yet such Grantee shall have the Estovers: for the Estate of the Copy-hold is not derived out of the Lord, (who is but an Instrument) and though the Grant be new, yet the Title to the Copy-hold is ancient. 2. When the Copy-holders for Life have used to have Common, or Waste, or Estovers, or any other Profit appender; and afterwards the Lord alien, the Waste, Woods, &c. in Fee, and after grant certain Copy hold Houses and Lands, for Lives, such Grantees shall have Estovers, &c. notwithstanding the Severance, for the Title of Copy-hold is paramount the Severance. 8 *Rep. Swain's Case.* 63, 64. 2 *Brownl.* 231. *mesme Case. Vide infra.*

Grantee by voluntary Grant shall have Trees (though they are severed by an Exception.)

And so though the Waste be aliened in Fee by the Lord, and so severed.

Whars Includ-
ed by Tim-
ber Trees.

If a Copy-holder by the Custom cut down Timber-Trees for reparations, he shall have the Trees, Lop, Top and Bark; and though he cannot repair with the Tops and Bark, yet he may sell them towards defraying the charge in repairing, 3 *Bulstr.* 281. *Sandford and Stephens.*

Where Copy-holder by Custom may not Fell and Sell Trees, but take the Shrouds of the Trees for Fuel; if the Copy-holder by force of the Custom shrouds the Trees, and the Lord takes the Body of the Trees, Copy-holder may bring Action of the Case against him, *Goswell's Case*, cited in *Ford and Hoskins Case. Rolls Rep.* 196.

To cut Tim-
ber for repairs
to what that
extends,

The Custom is, for Copy-holders of Inheritance to cut Timber for Repairs; he nor his Lessee cannot employ Trees fell'd with the Wind to any such use, in regard that hereby his special property ceaseth; much less can Lessee or Copy-holder for Life, by any such Custom take Trees, 1 *Keb.* 690.

Custom for
the Copy-
holder to cut
down all the
Trees.

Copy-holder for Life, by the Custom hath power to name a Successor; such Copy-holder may cut and sell all the Trees growing upon the Copy-hold. A bare Tenant for Life cannot be warranted by Custom to do such an act, *Powel and Peacock's Case*; yet here he had a greater Estate than for Life, for he hath power to make another Estate for Life. 2 *Brownl.* p. 192. *Rolls* and *Mason*. In this Case which was well argued by the Judges in 2 *Brownl.* 195. There were two Customs. 1. That a Copy-holder for Life may name his Successor. 2. That such Copy-holder may cut down all the Trees growing upon the Copy-hold Lands. The first Custom was adjudged good and reasonable, and the second was adjudged void.

Copy-

Copy-holder may justifie cutting Boughs for To sell Trees:
House-bote, Hedge-bote, Cart-bote, &c. 2 Brownl.
p. 329. Heydon and Smith.

But Tenant by Copy of Court Roll cannot
make Waste, nor cut Trees to sell, but for
his benefit in repairing his House.

If a Copy-holder for Life cuts down Tim-
ber Trees, the Lord may take them. If un-
der Lessee for years of a Copy-holder cuts
down Timber, it shall not be a forfeiture of
the Copy-hold Estate, Stiles p. 233.

A Copy-holder may prescribe to have the
Toppings of Trees for Fire-bote and Hedge-
bote, but the Prescription was to cut *ramos ali-* Uncertain
quarum arborum, which is uncertain; if *omnium* Pleading.
arborum, it had been well, Noy, p. 14. Crofs and
Abbot.

Presidents of Customs as to cutting Wood and Trees.

*Quod tenentes custumarii mes. habuer. communiam
estoveriorum in solo alterius, solvendum annuatim,*
2d. Dyer 363.

*Quod tenentes custumar. in feodo succidant arbores
ad libitum,* Cok. Entr. 284. Ub. 130. Simile,
1. Br. 252.

Quod tenentes custumarii amputent pollingers,
13 Rep. 67.

*Quod tenen. custumar. repararent sepes int. terras
custumar. & boscum per lignum capiend. in bosco,*
1 Leon. 313.

*Quod tenentes custumarii usi fuer. amputare arbo-
res pro sepiment. & focali, & succidere arbores pro re-
paratione domorum per assigna,* Hern 226.

C A P. VIII.

Customs as to Commons, and where Severance shall not prejudice. And Pleadings in such case.

Severance by the Lord shall not prejudice the Common of Estovers.

Pleading.

Where Copyhold is extinct the Common is lost, though the word *cum pertin.* be in the Grant.

THE Custom is that Copy-holders for Life have used to have Common in Wastes, or Estovers in Wood, or any other profit appendant in parcel of the Manor; after the Lord aliens the Waste, Woods, &c. in Fee, and after grants certain Copy-hold Lands, and Houses for Lives; such Grantees shall have Estovers, Common, &c. notwithstanding the Severance; for the title of Copy-hold is paramount the Severance, 8 Rep. 63, 64. *Swain's Case*, 2 Brownl. 231. *mesme*: But after such Severance the Copy-holder when he would intitle himself to Common or Estovers; he shall not plead generally, *Quod infra manerium talis habetur*, &c. *consuetudo*; for after the Severance the Waste or the Woods are not within the Manor, but absolutely divided from it; but he shall plead, That until such a time (*viz.*) before the severance, *talis habetur & a toto tempore, &c. consuetudo, &c.* and then shew the Severance, *mesme Case*.

Common which was first gained by Custom, and annexed to the customary Estate, is lost when the Copy-hold is extinct and infranchised; for Common is not in its own nature incident to a Copy-hold Estate, but a collateral interest gained by usage; therefore, Copy-holder of a Messuage and two Acres of Land for Life, had Common in the Lord's Waste; the Lord grants and confirms the said Copy-hold Mes-

Messuage and Lands, *cum pertinentiis*, to him and his Heirs. The Question was, whether he should have Common still. *Per tot. Cur.* he should not. Custom hath annexed the Common to his customary Estate, which being determined and destroyed by his own act in making it a Freehold, the Common is also destroyed, and cannot continue without special words; and the general words, *cum pertinentiis* will not help, *Telv. p. 190. Cro. Jac. 253. Marsham and Hunter's Case. Noy 136. mesme Case.* This is a local Prescription, not to the Land but to the Estate; and this proves well the words of the Prescription; for the Copy-holder ought to Prescribe, That every customary Tenant within the Manor, &c. so he hath his Common in respect that he is a customary Tenant; and this is in respect of the Estate, which he hath by the Custom, and not in respect of the Land. So was the Case of *Forth and Ward*, where a Copy-holder had used to take Estovers, to repair his Hedges, and the Lord granted to him the Freehold of the Copy-hold, by the words of Grant unto him all the Lands, Tenements and Hereditaments thereunto appertaining, and thereto used and occupied. It was resolved, he should not have Common in the Land of the Lord, *2 Brownl. 209. Marsham and Hunter, More, n. 866. Forth and Ward*; the words *cum pertinent.* do not create a Common.

A Copy-holder claims Common in another man's Land, and the Lord Enfeoffs the Copyholder of his Copy-hold Land, he hath now lost his Common: But if a Copy-holder hath Common in the Lords Wastes, and the Lord Enfeoffs him of the Copy-hold, with all his Commons, the Common is not gone, *1 Brownl. 173. Lee and Edwards.* And all Pastures and
Com-

Common whatsoever, to the said Messuage or Tenement belonging, or used or demised with the same, and it his intent that a like Common shall be granted, 2 *Anderson* 168. *Wolredg's Case*.

Abbot of F. was was seized of a Manor, and there was a Prescription for Common in the Waste of the Manor, as belonging to every Ancient Tenement. King H. 8. granted the Manor to Sir J. G. which came to Sir T. G. who was Plaintiff in Trespass: The Defendant justifies by an *usitatum fuit*, That it had been there used time out mind, that every Tenant for years of an Ancient Tenement and Close within the said Manor used to have Common of Turbary on the Waste of the said Manor, and that the Tenement and Close he now hath, is an Ancient Tenement, and was granted to him with all Common appurtenant to the said Messuage and Close, accepted or reputed as part, parcel or member of the same. And the Question upon a special Verdict was, when the Lord of a Manor is seized of a Waste, and a Tenant of an ancient Tenement prescribes to have Common in the Waste of the Lord; afterwards the Tenement is severed from the Manor, and granted for a Term to the Defendant, with all Common appurtenant to the said Messuage and Close, whether this Common that was before belonging to this Ancient Tenement shall pass to the Grantee? *Per Cur.* This Prescription as it is here laid with an *usitatum fuit*, is not good. It was agreed, That if a Copy-holder doth purchase the Inheritance of his Copy-hold, and afterwards grants this with all Commons belonging to the same; The Common that was before used with the Copy-hold, shall pass to the Grantee, but the

Plead-

Pleading by
an *usitatum*
fuit annexed
to the Estate
of a Termor
is not good.

ing here is not good. The beginning of this Common was by Grant, and by permission of the Lord, and this for the advancement of his Tenant, and not by Prescription, and no remedy he hath for this but only in Equity, *Per Williams* a Termor may prescribe, but not in his own name, but in the name of his Lord, That he hath had for himself and his Farmers, &c. Had it been laid here, with all Commons, Profits, used, occupied and enjoyed with the Tenement, by the Farmers, this with an averment had been good, but not as it is here; the Grant is here with the *usitatum fuit*; now here the *usitatum est* is annexed to the Estate of the Termor, which is not good, 1 *Bulstr.* 17, 18. 7 *Jac. Grimes* and *Peacock*, 2 *Brownl.* 222. *mesme* Case. Lessee for years cannot alledge an Usage; for every *usitatum* ought to go in one self same current, not interrupted, as in the Case of a Copyhold; but it might pass by apt words.

It was pleaded, That all the Inhabitants in such an ancient Messuage *ratione commorantia*, have used to have Common of Pasture *in loco in quo*, &c. 'tis ill; for in this word (*Inhabitants*) is included he which hath no Interest but Habitation only, and he that hath no Interest cannot have Common, 6 *Rep. Gateward's* Case: My Lord *Hobart's* Reason is good. Common is an Interest which must inhere in somebody, and cannot be pleaded by way of Custom for the Inhabitants that are not permanent to prescribe.

Pleading
Common *ratione*
commorantia.

Tenants in Fee must prescribe for Common, &c. in their own name, and others that have Interest, as for Life, Years, by Elegit, at Will, &c. in the name of the Lord, *Gateward's* Case, 6 *Rep.*

F

It

Sola & separalis pastura, excluding the Lord is a good Custom.

It was a Question in *Roberts and Hoskin's Case*, *Modern Rep.* 74. and 2 *Keb.* 757. *Sanders* p. 324. *Vaughan* 251. *North and Coe*. Whether a Custom for the customary Tenants to have *solum & separalem pasturam*, excluding the Lord, were a good Custom. *Per Cur.* it is, notwithstanding this Prescription for the sole Pasture, yet the Soil is the Lords, and he hath Mines, Trees, &c. And my Lord *Coke* is express in the point; a man cannot Prescribe for sole Common, but for sole Pasture he may. As for the manner of pleading it, *Vide* the Books cited.

Customs as to devising by last Will and Testament, *Vide infra* Surrender to the use of a man's last Will.

C A P. I X.

Of customary Incidents, or collateral Qualities. Of Copy-hold Estates, and how to be governed. With the Illustration of several particular Cases.

YOU may observe what has been before treated, about the nature of Copy-hold Estates, that (amongst the rest of the Considerations in that Chapter) where the Copy-hold Estate is inheritable, and the Land descendible, That in such Case the Law shall direct the descent, according to the Rules and Maxims of the Common Law, as incidents to every Estate descendible, as it was in the Case of Uses. When they had gained the reputation of Inheritances descendible, the Common Law directed the descent of them, and that there should

be a *possessio fratris* of them, as well as of other Inheritances. So it is in Copy-hold Inheritances, *possessio fratris facit sororem esse heredem*, *Vide prius, sub titulo* Maxims.

But now such customary Inheritances shall not have by the Law any other collateral Qualities, which do not concern descents of Inheritance, which other Inheritances at the Common Law have, unless it be by Custom; for though they are Estates of Inheritance according to the Custom, yet they are not Estates of Inheritance *simpliciter*, that is, to have all collateral Qualities, as Estates in Fee-simple have, but only such which Custom hath settled and allowed, 4 Rep. 22. *Brown's Case*. And accordingly my Lord Hobart in *Cox and Darsen's Case*, p. 215. &c. saith, The collateral Incidents of Estates, as Dower, Tenancy by the Curtesie, Wardship, &c. are not without special Custom.

And therefore Copy-hold Inheritance shall not be Assets to charge the Heir in an Action of Debt, upon Bond made by his Father, tho' he has therein bound his Heirs; neither shall the Wife of such customary Estate be indowed, nor the Husband be Tenant by the Curtesie, neither shall the descent of any such Estate toll the Entry of him that had customary Right, &c. But to explain this, in these before-mentioned Qualities, and others, I shall Illustrate it by several Cases and Resolutions.

Copy-hold
Lands, not Af-
sets in the
Heir.

Dower.

The Wife shall have Dower of a Copy-hold by special Custom, otherwise not; and when she is to be endowed of a Copy-hold by the Custom, then she shall have all the incidents to Dower; as to recover Damages for the Profits from the death of her Husband, by the Statute of *Merton*, C. 1. *De viduis*, 4 Rep. 30. *Shaw and Tompson*.

Tenant by the
Curtesie, and
that without
admittance of
the Wife.

The Custom of a Manor was, That if any man had a Wife, who was a Copy-holder in Fee of the Manor, and had Issue by her, that he should be Tenant by the Curtesie of the Land. *A.* a Copy-holder was seized, and had Issue a Daughter, who was married to *J. S.* who had Issue. *A.* dyed, his Wife entred; the Wife dyed before admittance. The Question was, if by the Entry of the Husband, without admittance of the Wife, he should be Tenant by the Curtesie. *Per Cur.* he shall; the delay of the admittance of the Wife, shall not prejudice the Husband being a third person, *More, n. 425. Ever and Aston*; but if a Woman Copy-holder in Fee takes Husband, who had Issue, and the Wife dyes, there the Husband shall not be Tenant by the Curtesie without special Custom, *4 Rep. 22. Ryers Case.*

Descent tolls
nor an Entry.
Discontinu-
ance.

The Descent of a Copy-hold doth not toll an Entry, *4 Rep. 22, 23. Bullock and Dibby, and 3 Rep. 9.* You may see there where the Entry shall be congeable by the Issue, after a Surrender or Lease by Licence of the Lord, made by the Ancestor, and shall not be a Discontinuance.

The Lord seized a Copy-hold without cause, and grants it to another, in Fee, Grantee dyes seized, and his Heir is admitted. The first Copy-holder dyes, his Heir enters, and Surrenders to the use of a Stranger. *Per Cur.* 1. Descent of a Copy-hold shall not take away the Entry of another Copy-holder who hath right. 2. The Entry of the Heir without admission is lawful, and being in, his Surrender is good, *Cro. Jac. 36. Joyner and Lambert.*

If one seized of Copy-hold Land in the Right of his Wife, Surrender this to the use of another in Fee, who is admitted accordingly;

ly ; the Husband dyes, this is no discontinuance to the Wife, nor her Heirs, but the Wife may enter, and not be put to her *cui in vita*, nor her Heir to her *sur cui in vita*.

If Copy-holder for Life Surrender to the use of another in Fee, this is no Forfeiture, for this passeth by Surrender to the Lord, and not by Livery. And Copy-hold Estates shall not have such qualities as Estates at Common Law have, without special Custom, 4 Rep. 4. *Clun*

and *Pearse* ; and therefore where by Custom of the Manor, Pleints have been made in the Court of the Manor, in the nature of real Actions, That if a Recovery be in a Pleint in the nature of a real Action, against a Tenant Copy-holder in Tayl, its adjudged that this shall be a discontinuance, and shall take away the Entry of the Heir in Tayl ; for these Pleints, in the nature of real Actions, are warranted by the Custom ; this is an incident which the Law annexeth to the said Custom, and such recovery shall be a discontinuance, 4 Rep. 23. *Deal* and *Rigden*.

Surrender by Copy-holder for Life to one in Fee, is no forfeiture.

But recovery by Pleint in a real Action shall be a discontinuance.

Having finished the Learning of Customs, in order to the understanding of Copy-hold Estates ; it will be convenient to say something of the customary Tenant, and of the Court, and the Steward, which shall be attempted briefly in the next Chapter.

C A P. X.

The several sorts of Copy-holders, and who shall be said to be customary Tenants. Of Copy-hold, Burrough-English. Of the Court. Two sorts of Courts Baron. Of the Copy-holders Court. Who may keep Courts, and to what purposes, and where. Of the Steward, his Office and power of Deputation; what he may do ex officio, or not.

WE read of three kinds of Copy-holders in our Book.

I. *Terra Nativa*: These were called Bond-Lands also, because they held in Villenage.

II. *Customary*. And this was held by Free Tenants.

III. *Mensales*. As also *Dominica*, because by this the Table of the Lord is maintained.

Some Copy-hold Land is called *Poadland*, and some *Molland*, a *mollis redditu*, where some small Rent was reserved.

There were two other manner of Copy-holds. *Old After* and *new After*.

After signifies a Chimney; those Copy-hold Lands which had had usually for a long time an House on them, they called *Old After Lands*; but those which of late had an House built on them, they called *New Afters*. And in old Records, the *Bastard Eigne* did plead, That he was

was *Filius Askarius*, as much as to say, Born in the House. 2 *Rolls Rep.* 235. *M.* 20 *Jac. B. R.* *Smith and Reynard.*

Some Copy-hold Land is in the nature of Burrough-English, *Cro. Jac.* 56. *Curtis's Case.* And so shall descend to the youngest Son. Some Copy-hold is of the nature of Burrough-English, as well for the Brother as the Son. *Cro. Jac.* 101. *Whitton and Williams.* Between a Copy-hold in Burrough-English, and a Freehold in Burrough-English, there is not any difference as to descents, *Cro. Car.* 411.

Copy-hold
Burrough-
English.

Baron and Feme, Copy-holders for Life of Copy-hold, of the nature of Burrough-English, Reversion to the Husband in Fee; he had Issue three Sons *William, George and Charles.* The Father dyed seized of this Reversion, which descended to *Charles.* *Charles* dies without Issue, the Wife dyes: Question was, whether *William*, Brother and Heir of *Charles*, or *George* should have it? *Berkly and Bramston* were for *George*, because there being a Reversion expectant upon Estate for Life, *George* shall take his Title from his Father, and take by descent from him who had seisin of the Free-hold, and not make mention of him who had the Reversion expectant upon an Estate for Life.

And in all Actions and Writs where a man conveys by descent, there shall not be mention of any, but of those who took the Estate and had seisin, and not from others who never had seisin, the Law esteeming them as if there had been never any such persons; and by consequence he may claim here as youngest Son, by the custom as Heir in Burrough-English, as if *Charles* had never been, because he hath it in course of descent; and this is true at Common Law; but *Jones and Croke* held, that

In all Writs where a man conveys by descent, there shall not be mention of any but those who had seisin.

William had the better Title, for *Charles* being youngest Son at the time of the death of his Father, that makes him Heir in Burrough-English, by the Custom; and when it rests in the youngest Son, as Heir by the Custom, the Inheritance is fixed in him, and he only who is in *esse* at the time of his Fathers death, shall have as by Custom; this seems to be the better Opinion, *Crok. Car. 410. Reeve and Malster.*

Who may be
said to be
customary Te-
nants.

A Wife that hath her Widows Estate, according to the Custom of the Manor, is a good customary Tenant.

So Tenant *per* the Curtesie, *per* the Custom. In *Gloucestershire* there is in a Manor a Custom, That Executors shall have the Profits for a year: In some sense they are good customary Tenants.

Under-Tenant
in what re-
spect.

Custom was, That for Waste to be amerced, and to distrain for such amercement, the Beast of the under-Tenant as well as the Tenant is liable. The under-Tenant is a customary Tenant to this purpose, and no Stranger: *Transit terra cum onere*, he enjoys the Priviledge of a customary Tenant, and he shall undergo the Charges, *March Rep. 161. Thorn and Tyler.*

Note.

There is difference between customary Lands, and Copy-hold Lands; Freehold as well as Copy may be customary Lands; as ancient Demesne may pass by Surrender in some Manors, and by Copy: and ancient Demesne may pass by Feoffment, as Surrender, *Vide Peryman's Case. Rep.*

Court.

The Nature of a Court Baron, and who may keep Courts or not.

A Manor cannot be without a Court Baron, *Vide supra*, it is inseparably incident to a Manor, without any Grant from the King to keep the same, and this is not drawn from the Crown, but is to be held *de necessitate*, 1 *Bulfr.* 6. The King and *Stafferton*.

The Court Baron must be holden within the Manor, for if it be holden without the Manor, it is void; unless a Lord being seized of two or three Manors, hath usually, time out of mind, kept at one of his Manors Courts for for all the said Manors; then by Custom such Courts are sufficient in Law, albeit they are not holden within the several Manors, *Co. Lit.* 58. a.

Where to be held.

There may be a customary Manor held by Copy, and such a customary Lord may keep Courts and grant Copies, 11 *Rep. Nevil's Case*, *Cro. Jac.* 260. *contra*.

Now there are two sorts of Court Baron, one at Common Law, incident to every Manor, and is of Freeholders, and the Freeholders are Judges. There is also a customary Court, consisting of customary Tenants, for without them it cannot be, and this Court may be holden without any Free Tenants, or other Suitors, except Copyholders, and of this Court the Lord or his Steward is Judge, *Co. Lit.* 58. And when the Court Baron is of this double nature, the Court Rolls contain matters appertaining to both.

Two sorts of Court Baron.

An

Honour, what?

One Court
kept for many
Manors.Customary
Court, how
made and may
be held.

An Honour consists of many Manors, yet all the Courts for the Manors are distinguished, and have several Copy-holders, and though there is for all the Manors but one Court, yet are they *quasi* several and distinct Courts; and so it was usually in the time of the Abbots, they kept but one Court for many Manors, *Cro. Car.* 361. *Seagood* and *Hone*.

When the Lord of a Manor having many ancient Copy-holds in a Vill, grants the Inheritance of all his Copy-holds to another, the Grantee may hold Court for the customary Tenants, and accept of Surrenders, and make Admittances and Grants; for although this is not a Manor in Law, because there want Freeholders, yet there may be holden a Court for Copy-holders, and the Lord or Steward is Judge. And as the other being a Court Baron may be called the Freeholders Court; this may be called the Copy-holders Court, so if all the Freehold do Escheat, or if the Lord release the Tenure and Services of all his Free Tenants, yet the Lord may hold a customary Court for his Copy-hold Tenants. So if the Lord demise all his Lands granted by Copy to another, for a thousand years, such Lessee may hold Court for the Copy-holders, *4 Rep.* 26 *Melwich's Case*, and *Sir Christopher Hatton's Case*, cited in *Neal and Jackson's Case.* 27. These number of Copy-holds may support a Custom, but a single Copy-hold cannot hold a Court.

Tenant at Will of a Copy-hold Manor, may grant Copyhold Estates, but cannot keep Courts.

Guardian in Socage keeps Courts in his own name, and grants Copies, its good, and shall bind the Heir. *Vide Tit. Grants, Cro. Jac.* 55, 98. *Shopland* and *Rider*.

The Lord himself may Grant or make Admittance out of the Manor, at what place he pleaseth, but so cannot the Steward, 4 Rep. 26. *Melwich's Case*. 27 *Clifton and Mollineux*; but by Custom the Court may be held out of the Manor, and Grants and Admittances there made, be good; as divers Abbots, Priors, &c. have kept one Court for many Manors.

Court may be held out of the Manor by Custom.

Steward.

Every Steward of Courts, is either by Deed or without Deed; for a man may be retained a Steward to keep his Court Baron and Leet, without Deed, and that retainer shall continue till he be discharged, Co. Lit. 61. b. 4 Rep. 30. And such Steward may take Surrender of customary Tenants out of the Court, 4 Rep. 30. *Holcroft's Case*.

In all real Actions which concern Lands, the Suitors are the Judges; but in personal Actions under the Sum of forty shillings, the Steward is the Judge. Steward without Deed may take Surrenders out of Court, but the Custom must warrant it.

Note, A difference between Steward of a Manor and the Steward of Courts; Steward of a Manor may take Surrenders in any place, 1 Leon. p. 227. *Case 307. Blagrave and Wood*.

Difference between a Steward of a Manor, and the Steward of a Court.

Steward appoints his Deputy to keep a Court *ad tradendum* Copy-hold Land to *W.* for Life, the Deputy commands *H.* his Servant to keep Court and grant the said Land (and the Custom found did not extend farther than the Deputy.) though a Deputy cannot transfer his Authority over, being an Office of Trust; yet

Per

Act done by
the Servant of
a Deputy.

What Court
may be held
out of the Ma-
nor.

Per Cur. to take a Surrender and grant Land by Copy, is not any judicial Act, and the admitting of a Copy-holder is not any judicial Act, for there need not be any Suitors there who are Judges, and such a Court may be holden out of the Precincts of the Manor: *Per Cur.* the Grant is good, especially if the Lord of the Manor agree to it afterwards, 1 Leon. 288. Lord Dacres's Case.

One is made Steward *ad exequendum per se vel sufficien' deputatum suum.* J. S. makes A. his Deputy, *hac vice* to take a Surrender, & *ad ulterius faciend.* &c. its a good deputation, and though the authority was to take the Surrender absolute, and he takes a Surrender upon a Condition, yet its good, by reason of these words, *Et ad ulterius faciend.* Cro. Eliz. p. 48. Burdets's Case.

The Kings Copy-holder is attainted of Felony, whereby his Copy-hold Escheats; the Steward may grant this over *ex officio*, without any especial Grant, yet its his duty before he does it, to inform the Lord Chancellor, Treasurer and Barons, 4 Rep. 30. Harris and Jay.

Surrender by
a Deputy
Steward, not
according to
his Warrant.

Stewardship was granted to A. to execute the Office *per se vel sufficien' Deputat. suum.* A. made a Deputation to M. *ad capiend. unam sursum redditionem* of one J. W. and J. his Wife, and to examine J. *ea intentione*, that the said J. W. and J. might take back an Estate for their Lives, the remainder over to J. B. in Fee. M. took two several Surrenders from the Husband and Wife, the remainder to J. B. in Fee, upon condition to pay a certain Sum of money, &c. *Per Cur.* The proceedings are well warranted by the Deputation aforesaid, 1 Leon. p. 289. Burges's and Foster. I can conceive this
to

to be the same Case as the former, and one will well help to explain the other.

If the Surrender and Re-grant is entred in the Roll of the Court, dated to be holden the second day of *May*, and the Deputation bears date the third day of *June* after. *Per. Cur.* This misentry of the date of the Court shall not prejudice the Party, for this Entry is not matter of Record, *Vide ibid.*

The Kings Auditor and Surveyor for the County of *N.* appointed a Steward for one of the Manors, *illa vice*; He kept Court and granted Copy-hold, &c. their appointment is not good; they have no authority to appoint Stewards, the one being to take Accounts, the other to survey Land, and the Grant is void. Things of necessity done by one who is but in a reputed Authority is good, if they come in by presentment from the Jury, or of necessity are good; as the admittance of an Heir upon a presentment, or admittance by a Surrender to an Use. But acts voluntary, as Grant of a Copy-hold, is not good. If the Steward diminish the ancient Rents and Services, its a void Copy. If a Lord command a Steward that he shall not grant such Land by Copy, if he grant it, it is void, *Cro. El. 699. Harris and Jay. 4. Rep. 38. mesme Case.* They ought to have Letters Patents of the Office of Steward.

Infant is not capable of the Stewardship of a Manor, *March p. 41.*

Copy-holder moved the Court, That the Steward might be ordered to bring in the Court Rolls to enable him to defend his Title, but the Court denied it, *Stiles 128.*

Baron and Feme Copy-holder in right of his Wife, surrender out of Court into the Hands of the Steward, and she was examined by him,

The Kings Auditor and Surveyor cannot appoint a Steward, *bac vice.*

Things of necessity by a reputed Steward, good, not acts voluntary.

Lord countermands a Steward.

Infant not to be Steward.

but I have known where no roll was made at the time of the Surrender, yet the Court granted the Copy-hold, and the Steward was appointed.

Though it is
not proved he
is Steward by
Patent, &c. yet
Surrender out
of Court into
his Hands is
good.

and it was not proved that he was Steward
by Patent, nor any special Custom to warrant
it; yet *Per Cur.* it was good, *Cro. Jac. p. 526.*
Smithson and Cage.

Declaration.

*Pro Senescallo Cur. Maner³ impedit de Officio
unde ei concess. pro vita, Rast. Ent. 5. 9 Co. 42.
1 Br. 192. Hern 232.*

C A P. XI.

*What things may be granted by Copy. Of
Grants by the Lord, legitimus Dominus
pro tempore. Disseisor. Infant. And in
respect of the Lords person or Estate,
what shall be good or not. Of Grants by
the King, Lord. VVho shall be said a Lord
sufficient to grant Copies. VVhat amounts
to a Grant, at what place to be granted. Of
Grants by the Copy-holder to the Lord.*

A Manor may be granted by Copy, *Ca.
Lit. 58. b. i. e.* a customary Manor; and
so a Manor may be parcel of another Ma-
nor.

Generally all Lands and Tenements with-
in the Manor, and whatsoever concerneth
Lands and Tenements may be granted by
Copy; as a Fair appendant to a Manor may
be granted by Copy, *Co. Lit. 58 b.*

Underwoods without the Soyl may be
granted by Copy to one and his Heirs, and
so may the Herbage or Vesture of Land.

The

The Lord granted to one and his Heirs, *subboscum* in *M. Wood*, *annuatim succidend.* by four or five Acres at the least, and then made a Lease of the Manor: The Lessee cut Trees. Copy-holder brought Trespass. Lessee justifies with averment, That he had left sufficient for the Copy-holder to cut down by four or five Acres yearly. 1. *Per Cur.* Underwood may be granted by Copy, if the Custom permit it. 2. That the whole Wood passed, and the words *annuatim succidend.* is an Order only appointed for the cutting it, and not to restrain the Grant, *More n. 480. Taylor and Hoe, and Cro. El. 413.*

Order of direction, not of instruction.

The Market of *Crokeham* in *Somersetshire* is always demised by Copy, 4 *H. 6.* 21. cited in *Hoe and Taylor's Case*, *More, n. 480.* and *Cro. Eliz. 413. Hoe and Taylor.*

The grant of Waste by Copy is void, unless so granted time out of mind; also were it good, it would not bind the Successor, in the Case of a Bishop, 3 *Keb. p. 124.* Bishop of *London* and *Rowe.*

Tonsura Prati, is grantable by Copy. So *Herbagia*, 1 *Rolls Abr. 498.*

Of Grants by the { Lord, or voluntary Grants.
Copy-holder.

Copy-holds come to the Lord by Escheats, *Note.* or Forfeiture, or Purchase: What comes by Escheat or Forfeiture, he may grant again.

H. 8. seized of a Manor in which are Copyholds, Grants Copy-hold for Life generally: It was a *Quere*, in *March Rep. 206. Fulham's Case*, and not resolved whether this be a good Grant or not; and *Per Cur.* The Grant is not void; it never recites in any Grant of the King what

Grant by the
King good, tho
not recited to
be Copy-hold.

what is Copy-hold. But the great Question was, whether the Copy-hold was destroyed or not? It was not there resolved, but seems so. But *Downcliff* and *Minor's Case* is more full to the purpose, 1 *Rolls Abr.* 498. If the King be seized of a Manor, whereof *Blackacre* is parcel and demisable by Copy in Fee, and this comes to the King by Escheat or Surrender; and after the King lets *Blackacre* to J. S. for Life, not taking consuance, that this was demisable by Copy; this is a good Grant, though the King recites not, that this was demisable by Copy; and by consequence this will destroy the power to grant this by Copy at any time after, *M. 15 Car. 2.*

Voluntary Grants by the Lord may } *Person.*
be considered in respect of his } *Estate.*

Disability of
person no
hinderance to
the Lord to
grant.

As for his Person, notwithstanding his disability, yet his Grants of Copy-hold shall be good and valid in the Law; as suppose he be an Infant, *Non compos mentis*, Lunatick, Outlawed, Excommunicate, yet he is capable to make a voluntary Grant by Copy. So a Feme Lady of a Manor takes Husband, and they two joyn in a voluntary Grant by Copy, this shall for ever bind the Wife and her Heirs, and the reason is, the Custom of the Manor being the main Foundation on which is built the whole Fabrick of the Copy-hold Estate, what the Custom doth confirm to the Copy-holder, the Law will ever allow and support it, notwithstanding any such Imperfections in the Grantors person, *Co. Lit. f. 58. b.* 8 *Rep. 63. a. b.* *Swain's Case. Noy, p. 21.* Grant by an Infant is good, as well as presentation to a Benefice.

If the Lord release to a Copy-holder in Fee, *Habendum* to him in Fee to the use of another, this is a good use, for upon such Release a Rent may be reserved, 2 *Rolls. Abr.* 788. *Sams's Case.*

What voluntary Grants by the Lord shall be good or not, in respect of the Estate or Interest which he hath in the Manor, and what not.

Voluntary Grants of Copy-hold Estates, are of such as come to the Lords hands by Escheat or Forfeiture, and the Lord may grant them by Copy again. It was adjudged in *Harris and Jay's Case*, *Cro. El.* 699. *M.* 41 *El. B. R.* That a Copy-hold Escheated, and which hath been kept in the Lords hands divers years, may be granted over by the Lord himself, or by his Steward.

This may be considered in respect of the $\left. \begin{array}{c} \text{Quantity} \\ \text{and} \\ \text{Quality} \end{array} \right\} \text{of his Estate.}$

He must be *Legitimus Dominus*, a lawful Lord at the time of his voluntary Grant; and then as to the quantity of his Estate in the Manor, be it great or little, is not material, whether he be seized of, or interested in the Manor, in Fee or Tayl, Dower or Curtesie, for Life or Years, Tenant *per Statute*, Elegit or at Will, or on Condition, he may grant any Copy-hold Escheated to him, for as long time as the Custom doth allow, the Rents and Services being truly reserved, and these Grants shall bind them that have the Inheritance or Freehold of the Manor; the Reason is well delivered in *Coke*

For a Copy-holder upon voluntary Grants made by Copy, doth
 G not

not derive his Estate out of the Lords Estate only; for then the Copy-holders Estate should cease when the Lords Interest determineth, but the Life of the Copyholders Estate is the Custom of the Manor; and therefore whatsoever befallerh the Lords Interest in his Manor, be it determined by course of time, death, forfeiture, or other means, yet if the Lord were *Legitimus Dominus pro Tempore*, though his Estate in it be very small, yet that is enough; for the same Custom that fixeth a Copy-holder instantly in his Land upon his Admittance, will likewise protect and support his Interest to the end in such manner, that though the Lords Interest faileth, yet the Copy-holders Interest shall not fall, being upheld by such a Pillar, unless he forfeit it by his own act.

Where Lord
may augment
the Rent, and
where not.

Where Copy-hold Land comes into the Hands of the Lord, by Escheat or Forfeiture; the Lord may grant this Land by Copy, rendring greater Rent, but not when he admits a Tenant.

The Lord Lunatick by his Steward may grant Copy-holds, but the Committees by their Steward cannot.

Blewet Lord of a Manor, wherein are many Copy-holders, grants the Stewardship to S. for Life, and after becomes a Lunatick, and found upon Inquisition, and thereupon committed W. to E. C. and others, under the Seal of the Court of Wards, &c. The Question was, whether the Committees by their Steward may grant Estates by Copy, according to the Custom? *Per Cur.* they cannot, for by the Law they have no Estate in the Manor, nor are the Lords thereof for the time being; but the Lord Lunatick by his Steward may grant Copyholds, and so it was decreed. But it was ordered that the Steward should grant none without the priy of the Committees, and warrant from the Court, but this was only for caution, *Sir James Ley's Rep. f. 47. Blewit's Case.*

There

Severance
from the Ma-
nor, what it
operates.

Therefore if the Lord sever a Copy-hold from the Manor, by granting the Inheritance to a Stranger ; now though one of the chief Pillars of a Copy-hold Estate is wanting, viz. to be parcel of the Manor, yet because the Land at the time of the Copy-holders admittance was customary, and had this necessary incident, this severance being a matter *ex post facto*, and being the Lords own act, shall not amount to the destruction of the Copy-hold.

There is this Custom in a Manor, That every Copy-holder Tenant for Life, had used to take all Trees growing upon his Land to be employed for Fuel, and Repairs, and Estovers. Queen *Eliz.* being Seized of this Manor, demiseth it to *J. W.* except *Omnibus boscis subboscis arboribus & maremiiis, Habend.* (except pre-except) for twenty one years; who assigns all his Interest to *J. P.* and others. Queen *Eliz.* dyes, King *James* grants *reversionem præd. ac præmissa sic ut præfertur except.* to *A. F. R. S.* and *P. W.* and their Heirs, the Lessees Attorn; *A. F.* and *P. W.* release to *R. S.* and his Heirs. Lessees and their Steward, &c. grant to *W. B.* Def. a Messuage and a Vierge of Land whereon the Trees grew, for term of Life, *secundum consuetudinem Manerij*; The Question was, inasmuch as the Lessees hold the Court by virtue of the said Lease of the Manor (out of which Lease the said Trees were excepted) if the Def. (the Grantee of the Lessees) may take the Trees. *Per Cur.* he may, notwithstanding the Severance by the Exception, and notwithstanding he comes in by Voluntary Grant and not by Surrender ; for the Estate of the Copy-holder which comes in by Voluntary Grant, is not derived out of the Estate or Interest of the Lord of the Manor, for he is but as an In-

The Estate of the Copyholder who comes in by voluntary Grant, is not derived out of the Lord.

strument to make the Grant, but the Custom of the Manor (after the Grant made) hath stablish'd and fixed this firm to the Grantee. So if the Copy-holders for Life used to have Common in the Lords Wastes or Woods, and the Lord aliens the Wastes or Woods to another in Fee, and after grants certain Copy-hold Lands or Houses for Lives, such Grantees shall have Common of Pasture or Estovers, notwithstanding the Severance, for the Title of Copyholder is paramount the Severance, and the Custom unites the Common or Estovers, which are but accessories and incidents so long as the House and Land, being the principal, is maintained by the Custom; which customary Appurtenants are not pertaining to the Estate of the Lord, for he is Owner of the Free-hold and Inheritance of the whole Manor, but they are appertaining to the customary Estate of the Copyholder, after the Grant made. 8 Rep. 63. *Swain's Case*.

Voluntary Grants made by Feoffee of Manor on Condition, good.

Feoffee of a Manor upon Condition grants Land by Copy, and afterwards the Manor becomes forfeited, and the Feoffor entreth, yet the Copy-hold Estate remains untouched; so if Feoffee of a Manor on Condition to Enfeoff a Stranger, and the next day makes a voluntary Grant by Copy, this shall bind, *Coke Cop.*

Voluntary Estates granted during the time of the Lords Interest shall be good, though the Lords Estate be avoided *ab initio*.

Nay, though the Estate of the Lord in the Manor, by Relation happen to be void, *ab initio*, yet if he grant by Copy during the continuance of his Interest it is good. So Copyholders Estates granted before a Divorce *causa præcontractus*, shall be good. So if a man espouseth the Lady of a Manor, under the Age of consent, and after she disagreeth, though the Marriage by relation was void *ab initio*; yet Copy-holds granted before disagreement

agreement shall never be avoided. So by *Popham in Rowse's Case*, *Owen* 28. If a Manor be devised to one, and the Devisee enters and makes Copies, and then the Devise is found to be void, yet such Copies of Surrenders are good. *Aliter* where such Devisee makes new or voluntary Copies.

If the Lord of a Manor commits Felony or Murder, and Process of Outlawry is awarded against him; after the Exigent he granteth Copyhold Estates according to the Custom and then is Attainted; these Grants are good though by relation the Manor was forfeited from the time of the Exigent awarded. So if the Lord had been Attainted by Verdict or Confession.

If the Lord of a Manor acknowledgeth a Statute, and then granteth Lands by Copy, and after the Manor is delivered to the Cousee in Extent, the Grant cannot by this be impeached.

Grant after Stat. acknowledged, and the Manor extended, yet shall be good.

Lease for years is made of a Manor, and to be void upon breach of a Condition; Condition is broken, and Lessee before entry of the Lessor, grants Estates by Copy; these Grants shall never exclude the Lessor, for upon breach of the Condition the Lease is void. But in case of a Lease for Life, or Grant in Tayl, or Fee of the Manor on such Condition, the granting Estates by Copy, before Entry of the Lessor, &c. may be good; for before his Title be executed by Entry, the Tenant, &c. hath a lawful Interest to grant by Copy, *Coke Cop. p. 100, 101. Sett. 34.* But if a Parson before Induction grant Lands by Copy, being parcel of a Manor which is Glebe Land, this admitting binds not, though he be afterwards Inducted, *Ibid.*

Tenant in
Dower shall
not avoid
such Grant.

If the Lord of a Manor taketh a Wife, and after that granteth Copy-hold Estates, according to the Custom, and dyeth, and the Feme hath this Manor assigned to her in Dower, yet she cannot avoid these Copy-hold Estates, because the Copy-holders are in by a Title paramount to the Feme, viz. by Custom, *Coke 8 Rep. 63. b. Swain's Case*. But if the Lords Heir make such assignment of Dower, she may avoid them.

But in all these Cases before put, observe these three Rules.

1. These Grants must be according to the Custom of the Manor, and Rents and Services customary must be reserved.

Tenant at
sufferance
Grants, &c.
shall not bind.

2. Though it is not material what Estate or Interest the Lord hath, yet it must be an Estate or Interest, and therefore Tenant *Pur auer vie* of a Manor is, *Cesty que vie* dyes, the Tenant continued possession of the Manor, and held Courts, and made voluntary Grants by Copy. *Per Cur.* This shall not bind the Lord, for he was but Tenant at sufferance, who had not any Interest, and so he was a Disseisor of the Manor, *More, n. 369. Rouse and Artois*.

3. As to the Lords Grant of the Copy-hold Estate in respect of his Estate in the Copy-hold, there the quantity of the Lords Estate is to be regarded; for if a Copy-holder in Fee surrender to the use of the Lord for Life, the remainder over to a Stranger, or reserving the reversion to himself, if the Lord will grant this by Copy in Fee, whatsoever Estate the Lord hath in the Manor, yet having but an Estate for Life in the Copy-hold, no larger Estate shall pass than he himself hath, *Coke Cop. 96*.

What acts of the Lord in granting Copy-holds

holds are not confirmed by Custom, but only strengthened by the Power, Interest and Authority of the Lord, have no longer continuance than the Lords Estate continueth. Therefore if a Tenant for Life of a Manor, granteth a Licence to a Copy-holder to alien and dyeth, the Licence is destroyed and the power of Alienation ceaseth.

Now as to the Quality of the Lords Estate, he must be *Legitimus Dominus*, he must have a lawful Estate in the Manor.

The Rule in *Cokes 4 Rep. Clark and Pennyfeather's Case*, is universally true. If a Disseisor or Feoffee of a Disseisor or any other who had a tortious or defeazable Estate or Interest, subject to the Action or Entry of another, hold Court, and make any voluntary Grant upon Escheat or Forfeiture of a Copy-hold, such voluntary Grant shall not bind him that hath right, when he hath re-continued the Manor by Action or Entry, for to this intent the said Custom shall be understood of a Lord, who hath a lawful Estate or Interest. A Grant upon an usurped Title shall never bind the right Owner, but that by Action or Entry he may avoid them; for the Law will not support a Custom which shall work or tend to the disherison of the right owner. If the Heir of a Disseisor (who comes in by descent) Grants any Copy-hold Estate, it may be avoided by the Dissee. So of a Feoffee of a Disseisor who comes in by Title.

Grant by one that hath a tortious Title, not Good.

If Tenant in Tayl of a Manor, discontinueth the Tayl, and after the discontinuance granteth Copy-hold Estates, and dyeth; now the Discontinuee comes in under a just Title, and shall enjoy against all the World, during the Life of Tenant in Tayl, yet his Interest being deter-

Grants made,
by whom shall
be avoided.

mined by the death of Tenant in Tayl, the continuance of the Possession is a Tort to the Heir, and upon his recovery in a Formedon in the Descender, he shall avoid these Grants. So in cases of *alienae* of a Manor, whereof a man was seized in *jure Uxoris*, making Grants, may be avoided after his death by the Feme. So Lessee for years of Tenant for Life, of a Manor: So by a Tenant at sufferance, as Tenant *pur autre vie*, who continues in after the death of *Cestuy que vie*. *Vide supra*. Rous and Artois Case, 4 Rep. 24. *mesme* Case.

By Lessee of a
Manor.

Lessee for years of a Manor grants a Copyhold in Reversion, and before the Reversion happen, the Term is expired, the Grant is void. So if such Lessee surrenders his Term, and then before his Lease should have ended in point of Limitation, the Reversion fallerth, yet the Grantee shall not have it.

Infant.

One that hath in present a Lawful Estate or Interest in a Manor, defeasable upon breach of Condition, Enters, he may make Grant by Copy before such Entry, and it shall be good: If Infant infeoff me of a Manor, though he may enter upon me at his pleasure, yet Grants made before his Entry, shall not be avoided by any subsequent Entry; *vide supra*.

Guardian in
Socage may
hold Courts
and grant Co-
pies, not the
Bayliff of a
Manor.

A Guardian in Socage may hold Courts in his own name, and may grant Copies, for he is *Dominus pro tempore*, and hath interest in the Land; but a Bayliff of a Manor hath no interest, therefore he cannot make Grants and Copies, but the Guardian hath interest *Provisione Legis*, but so as to be accountable for Fines, Owen, p. 115. *Shopland* and *Radlen*.

Grants of Co-
pies in Rever-
sion.

The Lord of a Manor for Life, or a particular Tenant having interest in the Manor might grant Copies in Reversion, although they were not

not executed in the Life of the Grantor, *More, n. 292. Sir Peter Carew's Case 136. contra.* So a Tenant in Dower of a Manor may grant Copy-hold, parcel of that which she hath assigned in Dower in Reversion (*Habend. post mortem A. P.*) though it was doubted in the Earl of Arundel's Case; and the reason is the Custom. For it is said in *Gay's Case, Cro. El. p. 661.* There is a Custom alledged, That *Dominus pro tempore*, may demise for one, two or three Lives, in Possession or Reversion: But one who hath a particular Estate in a Manor, cannot grant a Copy-hold by parcel, or demise part, and retain the residue himself. If a Feme be indowed of several Copy-hold Tenements, she cannot grant part of them by Copy in possession, or Reversion, *per Popbam, ibid. Vide mesme Case 1 Rolls Abr. 499.*

Copy-hold
not to be
granted by
parcels.

In some special Case, an Estate may be granted by Copy, by one that is not *Dominus pro tempore*, nor that hath any thing in the Manor; as if the Lord of a Manor by his Will in writing deviseth, That his Executors shall grant the customary Tenements of the Manor, according to the Custom of the Manor, for the payment of his Debts, and dyeth; (the Executor, though he hath nothing in the Manor) may make Grants according to the Custom of the Manor, *Co. Lit. 58. b.*

Where a
Grant may be
good by one
who is not *Do-
minus pro tem-
pore.*

At what place the Lord may Grant.

The Lord of a Copy-hold Manor may himself grant a Copy-hold at any place out of the Manor, *4 Rep. 26. b. Melwich's Case.*

What

*Lex Custumaria: Or,**What amounts to a Grant.*

The admittance of the Lord amounts to a Grant to him who had a Title; *Aliter*, if it is to him who was in by wrong, as by disseisin, 4 Rep. 22. *Winch Rep.* 67. *Hasset and Hanson.*

Grant by the Copy-holder to the Lord.

Though a Copy-holder may not convey his Copy-hold to a Stranger, without Surrender and Admittance; yet he may grant his Estate out of Court to the Lord of the Manor, by Bargain and Sale; for the Custom is not between the Lord and his Tenant, but between themselves only, *Winch Rep.* p. 57. *Hasset and Hanson.*

A Copy-holders Release to the Lord is a good Release, 1 Keb. 808.

C A P. XII.

Exposition of Grants. By what words in Grants, Copy-hold shall pass or not. What things shall pass by Grant of another thing as Appurtenant or Incident.

A Copy-holder of a Manor which had Common by Prescription, in sixty Acres, parcel of the Demesns of the Manor Escheated, and the Lord by Deed granted it to another in Tayl, *Per nomina, &c. communiarum quarumcunque dicto Messuagio sive tenemento spectan sive in aliquo*

aliquo modo pertinen. vel cum eodem Messuagio dimisso usitat. The Question was, whether by these words the Grantee shall have Common in those sixty Acres? *Per Cur.* The Donee in Tayl shall have such Common as the Copyholder had. But the ancient Common which was by Prescription, is determined by unity of possession in the Lord, but the Grant enures as a new Grant of the same Common: As, a Grant to *Islington* of the like Liberties which *London* hath, is a new Grant of the like Liberties, *Cro. Eliz. p. 794 M. 42 Eliz. B. R. Worledge and Kingswel.*

If the Lord of a Manor be seized of a Copyhold Estate, and grants this to another, *Hab.* to him and his Wife, and to the Heirs of their Bodies; the Wife shall take nothing by this Grant, because she was not mentioned in the Premises, and here is not any Surrender precedent to direct the Grant; but it passeth only by the Grant, and so it ought to be expounded as a Conveyance at Common Law. So if a Copyhold Tenant Surrender to the Use of himself *Habend.* to him and his Wife and to the Heirs of their Bodies; it seems that this is void, for it is in nature of a Grant at Common Law, *2 Rolls Abr. 67. Brooks and Brooks:* But in Surrender *aliter. Vide infra Tit. Surrender.*

Copyholder in Fee Surrenders to the Lord *ad intentionem*, That the Lord shall grant this again to him for Life, the remainder to his Wife until his Son shall come at full Age, and after to his Son; the Copyholder dyes, and after the Lord executes it to the Woman. *Per Cur.* This Interest to the Wife is a Term, *Dyer 251, 259.*

Though the ancient Common is determined by unity of possession in the Lord upon Eschear, yet revived by a new Grant, and by what words.

Nothing passeth to one named in the *Hab.* that is not named in the Premises.

Where a Grant shall be expounded as a Grant at Common Law.

By (*cum per-
tin.*) what pas-
seth.

Copy-holder had Common of Estovers in the Lords Woods, appurtenant to his Copy-hold, and he purchased the Free-hold of Inheritance in the Copy-hold, and had words in his Deed of Purchase, of all Commons appertaining to his said Messuage. *Per Cur.* The Common which he had in the Copy-Estate was extinct because the Common appertained to the customary Estate, which is determined, and because now he claims from the Lord, in whom the Common may not stand divided from the Land and Soil of the Wood; but had there been special words in the Grant of the like Common as he had in the Common. Before the Surrender it had been good, as a new Grant of the Common, *More, n. 915. 866. Fort and Ward.*

By what words in Grants Copy-holds shall pass or not.

What shall
pass by the
words (*All
the Demesne
lands.*)

King *Ed. 6.* by Patent granted *omnes terras Dominicales Manerij de W.* It was adjudged, That customary Lands held by Copy, parcel of the same Manor shall not pass, and yet they are in the Law parcel of the Demesne of the Manor; but in the Case of a common Person they shall pass by those words, *1 Rep. 46. in Alton Wood's Case.*

But if a man grant all his Demesne Lands, his Copy-hold Lands will not pass, if he had other Demesne to satisfy the words of the Grant, *2 Rolls Rep. 236.* And if I grant all my Lands and Tenements in *D.* my Copy-hold Lands there pass not, because they cannot pass by any such assurance, *Owen.*

Upon a special Verdict, King *H. 8.* seized in Fee of the Manor of *D.* granted by his Letters

ters Patents to Richard Andrews and Peter Temple in Fee, (*Inter alia*) *omnia Messuagia terras tenementa redditus reversiones servitia & hereditamenta sua in D. subscripta (viz.) totum illum annualem redditum quindecim solidorum & alia servitia ex cunctis de terris W. K. ac totum illud Messuagium & 6 vergatas terre in D. in tenura J. D. Habend. & tenend. omnia predicta Messuagia terras tenementa redditus reversione servitia & hereditamenta in D. pred. to the said Richard Andrews and Peter Temple, and their Heirs. The Question was, whether this was a good Patent to convey the said Lands of the said W. R. (being a Copy-holder *pur vie.*) *Per Cur.* It was a void Patent to convey the Lands of the Copy-holder to them; for there is not any Land granted but the Rents and Services of W. R. which is intended Freehold, and there being none such the Grant is meerly void, *Cro. Car. 21. Castle and Hobbs.* By *Hobart*, if the King grant you his Demesns, you shall not have his Copy-holds, in *Waste and Pretty's Case, Winch, p. 3.**

What things shall pass by Grant of another thing, as Appurtenant or Incident, or not.

If there be a Common appendant to a Copyhold Tenement, and the Lord makes a Feoffment of the Tenement with all Profits, Commodities and Common to this Appurtenant; Yet the Feoffee shall not have any Common, for this was Appurtenant to the Copyhold, and not to the Freehold, *2 Rolls Abr. 61.*

Appurtenant.

So if he Lease the Copyhold Tenements for years, with such words as before, yet Lessee shall not have any Common for the reason aforesaid, *ibid.*

There

What passeth
or not by the
words, *cum*
pertinentiis.

There being a Copy-hold Messuage called *Symonds*, whereto divers Copy-hold Lands were appertaining, the said Messuage called *Symonds cum pertinentiis*, being surrendred to the Lord and all his rights therein: It was moved, whether by that surrender the Copy-hold Land shall pass, or only the said House with the Orchards, Yards and Curtelage. And *Per Cur.* The Copy-hold Land shall not pass by these words *cum Pertinentiis*; and in this it is all one in case of a Copy-hold as a Freehold, *Cro. Jac. p. 526. Smithson and Cage.*

By Feoffment of the Manor Copy-holds pass,
3 *Keb.* 456.

Common.

Copy-holder had Common of Estovers in the Lords Wood appurtenant to his Copy-hold, and he purchased the Inheritance of the Copy-hold, and had the words in his Deed, *of all Commons appertaining*, the Common is extinct, had there been special words; *aliter, More, n. 915. 866. Vide supra.*

cum Pertin.

Copy-holder hath Common in the Wastes of the Lord; the Lord by Deed confirms to a Copy-holder, *Hab.* to him and his Heirs, with the Appurtenances; the Common is extinct, for he hath his Common in respect as he is customary Tenant, 2 *Brownl.* 210. *Marsham and Hunter.*

C A P. XIII.

Of Surrenders. The nature of a Surrender. General Rules and Diversities for the better Explication. Of the Alienation of Copyhold Estates in general, and of selling Copy-holds by Commissioners of Bankrupts in particular. Of Surrender in Court. By what words a Surrender will pass. What amounts to a Surrender. Of a Surrender out of Court. Who may take a Surrender out of Court. What Surrender out of Court is good or not.

Of Surrenders.

The Nature of a Surrender.

A Surrender is a giving up of the Land by the Tenant to the Lord, according to the Custom, to the use of him that is to have the Estate, and is entred in this manner. The form thus, according to Mr. Littleton.

Ad hanc curiam venit A. de B. & sursum reddidit in ead. curia unum Messuagium, &c. in manus Domini ad usum C. de D. & Hæredum suorum, vel Hæredum de corpore suo exeuntium, vel pro termino vitæ suæ, &c. Et super hoc venit predictus C. de D. & cepit de Domino in ead. Curia Messuagium præd. &c. Habend. & tenend. sibi & hæredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum

terminum vitæ, &c. Ad voluntatem Domini secundum consuetudinem manerij, faciendo & reddendo inde redditus servitia & consuetudines inde prius debita & consueta, &c. Et dat Domino pro fine, &c. Et fecit fidelitatem, &c.

Note, The Surrender to the Lord is general, without expressing any Estate, for that he is but an Instrument to admit *Cesty que use*; for no more passeth to the Lord, but to serve the Limitation of the Use; and *Cesty que use*, when he is admitted, shall be in by him that made the Surrender, and not by the Lord.

And therefore if Copyholder in Fee Surrender to the use of another for Life, nothing more passeth from him, but what shall serve the Estate limited to use, 9 Rep. 107. *Podger's Case*.

A Surrender is in nature of a Deed Poll, rather than of an Indenture, and enures by way of limitation of use, 1 *Sanders* 151.

If a Copy-holder Tenant Surrender to the use of himself, *Habend.* to him and his Wife, and the Heirs of their Bodies, it seems this is void; for it is in nature of a Grant at Common Law, for she was not named in the Premisses, 2 *Rolls Abr.* 67. *Brooks's Case*, *Vide infra*.

A Surrender is to this purpose, that the Lord should not be a Stranger to his Tenant.

A Surrender is but a Conveyance by matter of Fact, and no higher, and therefore where Surrenderer is Infant, and dyes, his Heir shall enter, *Cro. El.* 90. *Knights's Case*.

If a Copy-holder in Fee take the same Land of the Lord by other Copy for Life, this is not any Surrender or Determination of his Copyhold Inheritance; for a Copyhold may not be surrendered but by actual Surrender in Court;

sursum

It must be an actual Surrender in Court and not a Surrender in Law.

sursum reddens this into the hands of the Lord, and not by Surrender in Law, 1 *Rolls Abr.* 501. *Shepard and Adams.*

In grant of a Reversion, Attornment is not necessary for a Copy-holder, because there is no time when the Termor should Attorn; for before the Surrender he cannot Attorn, and after the Surrender and Admittance it is too late. The Copy-hold Estate is like an Estate raised by Uses or Devise, in which an Attornment is not necessary, 1 *Brownl.* 179. *Swinerton and Miller.* The Surrender and Admittance are in the nature of an Inrolment, and so amount to an Attornment, or at least supply the want of it; 1 *Leon.* 297. Attornment, why not needful.

General Rules and Maxims.

1. Implication is not good in a Surrender, though it be in a Will. A Surrender of Copyhold Land was to the Use of the second Son for Life, after the Death of the Tenant and his Heirs, it was adjudged not good, 1 *Brownl. Rep.* 127. *Allen and Nash, Noy.* 152.

2. In Copyhold Cases, a Surrender to the Use, &c. This is no Use properly, but an Explication shewing how the Land shall go, 1 *Brownl.* 127.

3. It is the general Custom of the Realm, That every Copy-holder may Surrender in Court, and need not to alledge any Custom therefore; so if out of Court he Surrender to the Lord himself, he need not in Pleading alledge any Custom; but if he Surrender out of Court into the Hands of the Lord, by the Hands of two or three Copy-holders, or by the Hands of the Bayliff, &c. or by the Hands of

H

any

any other, these Customs are particular, and therefore he must plead them, *Co. Lit.* 59. a.

The Estate of *Cesty que use* shall ensue the Limitation in the Surrender, and not in the Admittance of the Lord, *Co. Lit.* 659. b. If two Joynt-Tenants be of Copy-hold Land in Fee, and the one out of Court, according to the Custom, surrender his part to the Lords Hands to the use of his Will, and by his Will deviseth his part to a Stranger in Fee, and dyes, and at next Court the Surrender is presented; by the Surrender and Presentment, the Joynture is severed, and the Devisee ought to be admitted to the moiety of the Lands, for now by relation the state of the Land was bound by the Surrender, and the Lord cannot grant a larger Estate than is exprest by the limitation of the Use, 1 *Roll. Rep.* 438. In Grant of a Reversion, Attornment is not necessary for a Copy-holder, *Vide supra.*

5. Copy-hold may not be surrendred but by actual Surrender in Court, and not by a Surrender in Law, *Vide infra.*

6. A Copy-holder cannot Surrender an Estate to another, and leave a particular Estate in himself, no more than a Freeholder, *Vide apud.*

Before I come directly to treat of Surrenders (one of the most useful pieces of Learning as to Copy-hold Estates,) I shall premise some general Considerations, as to the Alienation of Copy-hold Estates, or of a Transferring of Copy-hold Interest from one to another, and more particularly of the Selling and Aliening of the Copy-hold Lands of a Bankrupt, the knowledge whereof is very necessary, and not very common.

The Assurance of Copy-hold Land from one man to another (who is not Lord) must be made by Copy of Court Roll, according to the Custom, and this must be by Surrender, and for the perfecting thereof must be Presentment and Admittance generally. For,

If I would have my Estate pass according to my Will, I cannot devise this Copy-hold by Will, but must surrender it to the use of my last Will, and in my Will I must declare my intention. But for the manner of doing it, and the operation in Law, *Vide postea sub Titulo Surrender to the Use of a mans last Will.* And

If I would Exchange Copy-hold Land with another, I cannot do it by Deed of Exchange, but we may Surrender it each to other, and the Lord shall admit us accordingly.

But Copy-hold Estates in some Cases may pass and be transferred from one to another without Surrender, and that by Release: But then we must observe this difference between a Release that enures by way of extinguishment, or by way of an enlargement of an Estate.

Copy-hold in some Cases may pass otherwise than by Surrender.

By Release sometimes a Copy-hold may be transferred when it enures by way of extinguishment, and so may serve to drown a Copy-hold Right. As for the purpose, A man is admitted upon a void Presentment, and where the Presentment and Admittance is not according to the Surrender; as where the Presentment is absolute and the Surrender conditional, and so void; It was resolved that the Admittee had a customary Estate by Possession, and is in by Title, and is capable of a Release from him who had the right; and here is a customary Estate upon which the Release may well be grounded; besides the Lord is not prejudiced, he being satisfied his

As, by Release;

Fine upon the Admittance. So if I am ousted of a Copy-hold, and the Lord admit the Disseisor, according to the Custom, a Release made by me will extinguish my right. But if one be disseised of a Copy-hold Estate, a Release by the Disseisee to the Disseisor is void, for this is a prejudice to the Lord in losing his Admittance Fine, if it should be good, and there is no customary Right upon which a Release should enure, there never having been Admittance as was in the other Case: So is *Mortimer's Case, Hetly, p. 150.*

But a man cannot pass a Copy-hold Estate by way of Lease and Release, because this Release enures by way of enlargement of Estate, and to transfer an Interest, but this must be by a Lease for a Year (which is warranted, &c.) and by Surrender of the Reversion into the hands of the Lord, and he to grant it over to the Lessee.

One Joynt-Tenant releaseth to his Companion.

One Joynt-Copy holder released to his Companion, and it was resolved in the Case of *Wase and Pretty, Winch Rep. p. 3.* That the Release was good, without Surrender or Admittance; for the first Admittance is of them and every of them, and the ability to Release was from the first Conveyance and Admittance.

In some Cases Copy-holds cannot pass by Surrender, Release, Admittance, or otherwise. As for the purpose;

The Lord grants an ancient Copy-hold to S. in Fee, and after he grants the Inheritance of that Copy-hold, to a Stranger in Fee. S. makes his Will, and demiseth it to M. which was surrendred at next Court; now by the severance of the Copyhold from the Manor, the Copy-hold is not destroyed, but it is not parcel

parcel of the Manor ; now if one would alien this, he cannot do it by Surrender, for its not parcel of the Manor, neither can the Feoffee make Admittance, for he is not *Dominus* ; but if such Copy-holder will alien, there is no way but to have a Decree against him and his Heirs in *Chancery*, and so to bind his person, but by it the Interest of the Land is not bound, 4 *Rep.* 24, 25.

“ By the Statute of 13 *El. Cap.* 7. Copy-hold Lands are to be sold by Deed Indented and Inrolled in any of his Majesties Courts of Record (as other the Bankrupts Land;) but by the same Statute it is provided, That all Persons to whom any such Sale shall be made, shall before such time as they shall enter and take the Profit of the same, agree and compound with the Lord of the Manor, of whom the same shall be holden, for such Fines or Incomes as heretofore hath been usual and accustomed to be yielded or paid therefore; and upon every such Composition the Lord for the time being, at the next Court to be holden at and for the said Manor, shall not only grant to such Vendee upon request, the same Copy or customary Lands or Tenements, by Copy of Court Roll of the said Manors, for such Estate or Interest, as to them shall be sold, and reserving the ancient Rents, Customs and Services ; but also in the same Court admit them Tenants of the same Copy or customary Lands, as other Copy-holders of the same Manor have been wont to be admitted, as also to receive their Fealty accordingly.

Note, Copy-hold Lands are within all the Statutes of Bankrupt, *Cro. Car.* 550. *Crisp* and *Plat.*

Title to a Copy-hold cannot be made by the Commissioners, without Surrender or Admittance, 1 *Keb.* 24.

How and to
what purpose
such Estate
Vests before
Admittance.

Cro. Car. 569. In *Parker and Bleke's Case* it is adjudged, That by Bargain and Sale made by the Commissioners of Bankrupts, the Estate of the Copy-holder is vested in the Bargainee before Admittance, though he may not enter and take the Profits till Admittance: The Bargain and Sale binds the Copy-holder and bars his Estate, and he is no Copy-holder after the Bargain and Sale enrolled. And where the Bargainee is admitted by the Lord, it shall have relation to the Bargain and Sale: And where the Custom was, That the Wife of a Copy-holder dying Tenant shall have a Life Estate, it was adjudged the Copy-holder dying, after the Bargain and Sale, his Wife shall be barr'd of her Widows Estate.

A Bankrupt purchaseth a Copy-hold, and the Tenant Surrenders into two Tenants Hands, to the use of the Bankrupt, and now he will not be admitted: This may be sold by the Commissioners and the Vendee may pay the Admittance.

Of Surrender.

Now I shall treat of Surrenders, then of Presentment and Admittance, for that they make up but one Copy-hold Title.

First of Surrenders.

We have seen in the last Chapter, how that in some Cases Copy-hold Lands may pass without Surrender. Now

In some few Cases a Surrender is sufficient without Admittance, or Presentment, as if the Copy-holder Surrender to the Lords use, there needs no Admittance. And

Where Surrender is sufficient without Admittance.

In some Cases Admittance will do without a Surrender; as if the Lord make a voluntary Grant of the Copy-hold in his hands, no Surrender is needful, but Admittance only.

Where Admittance is sufficient without a Surrender.

But regularly Estates of Copy-hold must pass by Surrender and Admittance; and if the Surrender be out of Court there must be a Presentment.

Of a Surrender in Court.

By what words a Surrender will pass.

It cannot well pass by any other word than *sursum reddidit*, Surrender; if it pass in the Court by the words, *Give, Grant, Bargain, Sell*, this will not so pass it, but the Heirs of the Copy-holder shall avoid it: It is *vocabulum artis*, as *Warrantizare*, and some other Law words are.

What will amount to a Surrender in Court or not.

By Hobart in *Hutton Rep.* p. 81. If a Copy-holder comes into Court, and saith, *That he is weary of his Copy-hold, and requests the Lord to take it*, that is a Surrender: And by some, if he come into the Court, and desire the Lord to admit his Son into the Copy-hold, this is a good Surrender to the use of the Son: But if a Copy-holder comes into Court, and saith, *He renounceth his Copy*, this is not any Surrender; and if the Copy-holder say in the presence of

What Words;

any other Copy-holders, *He is content to Surrender to the use of J. S.* This is not a good Surrender. Any words in the Court that declare his intention of surrendering into the Lords Hands, is good, 3 Rep. 80. in *Belfield's Case*.

What Acts.

It was agreed between the Lord of a Manor and J. S. That in Consideration of 5 l. paid to the Lord, J. S. should enjoy the customary Lands for his Life, and also of *Alice* his Wife, *durante viduitate*, and that J. S. should have election, whether the said Lands should be assured to him and his Wife by Copy or by Bill, &c. and he chose by Bill, which was made accordingly. *Per Cur.* Here is a good Surrender of the said Lands, and that for Life only; 1 Leon. p. 191, *Collman* and Sir H. Portman's Case.

Cannot be surrendered but by actual Surrender.

If a Copy-holder in Fee takes the same Lands of the Lord, by other Copy for Life, this is not any Surrender or Determination of his Copy-hold Inheritance, for a Copy-hold may not be surrendered but by actual Surrender in Court, and not by a Surrender in Law, 1 Rolls Abr. 501. *Shepard and Adams*: But in 3 Bulst. p. 80. *Belfield and Adams*, its Reported thus: Copy-holder in Fee comes into the Lord's Court, and there takes a new Estate of his Copy-hold from the Lord to himself, for his Life, after to his Wife for Life, and after to his Son for Life, this was admitted a Surrender, and so was the other Case in 1 Roll 501. *Postea* 13 Jac. But the Reversion is in the Surrenderor, no disposition having been made of it. So in this Case, this is not a giving up his Estate of Inheritance, but only it shall enure by way of Surrender, to the use of himself for Life, after to the use of his Wife for Life, and after to the use of his Son for Life: But if a Copy-holder of Inheritance takes a

Lease

In whom the Reversion after a particular Estate remains.

Lease by Indenture for years, by this his Copyhold Estate is gone; and this is a Surrender of his Inheritance; in the other Case the Inheritance remains in him, and is thus Reported by *Rolls*;

If a Copy-holder in Fee comes into Court, and accepts by Copy an Estate to himself for Life, remainder to his Wife for Life, remainder for the Life of his Son. The Question was, whether this shall Estop him from claiming another Estate, and so to lose the Inheritance. And *Per Cur.* he shall not be estopped; its but as a Surrender, and the Reversion in Fee continues in his own person, 1 *Rolls Rep.* 265. *Southcot* and *Adams.* 1 *Rolls Abr.* 171, 172. *mesme* Case.

Copy-holder by accepting of an Estate is not Estopped from claiming another Estate.

Of a Surrender out of Court.

A Surrender into the hands of two Tenants, they are but as Instruments, and therefore in an Arbitrament, if its awarded that one Party shall Surrender into the hands of two Tenants of the Manor, who shall present this, &c. this is a good Award, although it is to be made to Strangers, who are not compellable, because they are to be used as Instruments, *M.* 13 *Jac. B. R. Pooley* and *Coot.*

A Surrender out of Court, if it be duly done, is as binding as that that is done in Court.

Who may take a Surrender out of Court.

A Copy-holder may Surrender into the hands of the Lord himself out of Court, without a particular Custom to warrant it, and in Pleading he need not to alledge any Custom, *Co. Lit.* 59. *a. b.*

The Lord himself.

Copy-

By the hands
of two Te-
nants.

Copy-holder may Surrender out of Court, into the hands of the Lord, by the hands of two or three Copy-holders, or by the hands of the Bayliff or Reeve, &c. or by the hands of any other, but this cannot be without particular Customs, and therefore he must plead these Customs, *Co. Lit. 59. a.*

By Steward.

The Steward of a Manor may take a Surrender of a Copy-hold out of the Manor, *M. 13 Jac. B. R. Housley and Wild.* And the Lord or his Steward may grant Copies out of Court as well as in Court, *Cro. El. 103.*

But in such Case how it must be presented, *Vide sub Titulo Presentment, infra.*

By special
Steward ap-
pointed by
the Lord to go
to the Surren-
deror.

If he who ought to Surrender cannot come in Court to Surrender in person, the Lord of the Manor may appoint a special Steward to go to the Prison and take the Surrender, *1 Leon. p. 36.* So if a Copy-holder be *in extremis*, the Custom was to Surrender into one Tenant's hands, in the presence of credible Witnesses, a Surrender was made accordingly, but presented to be done to another Tenant, yet being proved to be done to a Tenant of the Manor, it was holden by *Wadham Windham* Justice, to be good, *May's Case, Norfolk Summer Assises, 1663.*

A Surrender
to one Tenant's
hands and
presented to
be done to
another, yet
good.

What Surrender out of Court is good or not.

A Surrender by Letter of Attorney to two customary Tenants out of Court, is good; for as a Copy-holder may Surrender in Court *de communi jure*, by the common Custom of the Realm, and at Common Law, so he may do it by Attorney, as a thing incident at Common Law; and the reason is founded upon a diversity. If a man had a naked Authority, cou-
pled

pled with a confidence as Executors have to sell Land, they cannot do it by Attorney; but if a man hath absolute Authority as Owner of the Land, which a Copy-holder hath, having a customary Estate of Inheritance, he may do it by Attorney, and so this need not be pleaded as as a Custom. And though a man have an Authority joyned with an Interest, yet if the Authority be warranted by special Custom only, it cannot be executed by Attorney. As if there be a special Custom, That a Copyholder for Life may make Estate for twenty years to continue after his death; this Estate cannot be made by Attorney; so for an Infant to Surrender at the years of discretion, *Co. Cop.* 105. But in *Chapman's Case*, *Hill, 28. El. B. R.* Where the Custom of a Manor was, That the Copy-holder out of Court may Surrender into the hands of the Lord of the Manor, by the hands of two customary Tenants; in such Case the Copy-holder by his Attorney may not Surrender into the hands of the Lord, by the hands of two Copy-hold Tenants, for without special Custom to warrant it, its not good.

When one may do a thing by Attorney and when not.

Authority to be pursued strictly.

But such Attornies ought to pursue the manner and form of the Surrender, in all points, according to the Custom, as the Copy-holder himself ought to have done; as if by the Custom it ought to be done by the Rod, or any other thing, &c.

The form of a Letter of Attorney was in this manner.

That the Copy-holder doth Constitute *W. T.* and *E. A.* two Copy-hold Tenants of the Manor of, &c. his lawful Attornies to Surrender *vice & nomine suo*, to the Lord of the Manor, ten Acres, &c. to the use of *J. N.* and his Heirs,

Heirs, and after at a Court held in the Manor, 8 July, Anno, &c. The said Attornies tunc tenentes Dom. per Copiam Rot. Cur. & in ead. Curia ostenderunt script. præd. geren. dat. præd. 12 die Novemb. &c. Et iidem W. & E. autoritate eis per præd. literam per Attornatum dat. in plena curia sursum reddiderunt in manus Dom. præd. &c. Acras, &c. ad opus & usum, &c. Now the Attorney must do the Act in the name of him who gives the Authority, as it is in Brownl 94. The Letter of Attorney must say for him and in his name, yet the Entry aforesaid is good; for it is W. & E. sursum redderunt & autoritate eis dat. which is as much as if they had said, We as Attornies of, &c. Surrender. I as Attorney of J. S. do Surrender, or by Authority of this Letter of Attorney, I Surrender, it is all one, 9 Rep. 76. Combe's Case.

Attorney ex
What Entry as to the form of a Letter of Attorney is good.

Not to be done without Deed, but admittance by Attorney may be without Deed. Lessee for years cannot Surrender by Attorney, and how he may.

A Copy-hold Estate cannot be surrendered to another by an Attorney, without Deed, but one may be admitted to a Copy-hold Estate, by Attorney without Deed, Stiles Pract. Reg. 74. Lessee for years cannot Surrender by Attorney, but he may make a Deed purporting a Surrender, and a Letter of Attorney to another to deliver it, 1 Leon. p. 36.

Copy-holder of Inheritance makes a Letter of Attorney to two jointly and severally, to Surrender his Copy-hold Lands to certain uses, according to the Custom of the Manor after his death, Quære, if this be a good Custom, Stiles Rep. p. 291, 311. Wallis and Bucknal, and p. 243. Roby and Twelves.

Litera Attornatus ad sursum reddend. tenementa custumaria, sursum redditio & admissio, Co. Ent. 575, 676.

Pled.

*Pled. quod tenentes custumarij possunt sursum red-
dere Tenementa tam extra Curiam in presentia 2
vel 3 tenentium quam in curia manus Senel. Ra.
Ent. 645. Simil. per 1 vel 2 Tenentes ut Attornatus,
Co. Ent. 657.*

C A P. XIV.

*What shall pass, and by what words in a
Surrender. Of Attornment. The Con-
struction and Exposition of a Surrender.
Where no Use or Estate is immediately
limited in whole or in part. And where
an Use is limited, how far the Construc-
tion shall go, according to the Rules of the
Common Law, or not. Of Surrender to
Use upon Use. To the Use of one's Wife.
Where a Surrender is void for the uncer-
tainty. Of a Surrender to the Use of a
person not in esse. And of a Surrender
to take effect in futuro.*

*What shall pass, and by what words in a
Surrender.*

B. Covenants to assure all his Copy-hold
Lands to *A.* after he Surrenders out of
Court, according to Custom, diverse parcels by
particular Names, the Surrender is enrolled ac-
cordingly, with this Conclusion, *By the name of
all his Copy-hold Lands there*; yet no more shall
pass than what was named in the Surrender,
Dyer 8 El. 251.

Harvey

Harvey Justice said, he knew it to be adjudged, That a Surrender, *cum pertinentiis*, will pass Land, *Hetly*, p. 2. And that a Surrender of a Messuage and three Acres, would pass more Acres if divers Copies successive have been so. I suppose he means if the words *cum pertinentiis* be in.

What Ceremony, &c. is requisite or not to make good a Surrender.

Attornment.

A Copy-holder with Licence, leased for Years, rendring Rent, and afterwards surrendered the Reversion, with the Rent, to the use of a Stranger, who is admitted: Here needs no Attornment, either to settle the Reversion, or create a privity; for the Surrender and Admittance are in the nature of an Inrollment, and amount to an Attornment, or at least supply the want of it, 1 *Leon.* 297. But there must be an Admittance by the Lord; but in such case there shall be no Entry for Condition broken, without Attornment, *Hobart* 177. *Swinnerton* and *Miller*, 1 *Rolls Abr.* 235. *mesme* Case. *Vide sparsim de Attornment.*

The Construction and Operation of Surrenders.

Where no Use or Estate is immediately limited in whole or part.

Surrender to the Lord, without expressing what use.

If a Surrender be made to the Lord in general, without expressing to what use, it shall be taken to the Lords use, *Kitch* 81. And therefore in *Bunting's* Case, cited in *Brown* and *Foster's* Case; A Custom was, That if any surrendered to the use of another, without expressing any Estate, that the Lord may grant it

to him to whose use the Surrender was made : It was adjudged a good Custom, and the Lord shall ascertain the Estate. A Copy-holder sold his Copy-hold Estate, but shews not what Estate, Or what but surrendred it the use of the Bargainee, and Estate. the Lord granted it in Fee to the Bargainee, and it was adjudged good, *Cro. El.* 392.

Copy-holder in Fee surrendred his Lands into the hands of the Lord, without saying to whose use the Surrender should be ; and at the next Court the said Copy-holder was admitted *Habend.* to him and his Wife in Tayl, remainder to his right Heirs. *Per Cur.* The subsequent Act shall explain the Surrender, and when the Copy-holder accepted a new Admittance, the Law intends the Surrender was made to such an use as is specified in the Admittance. *Quando ab est provisio partis, ad est provisio Legis*, *Popham*, p. 125, 126. *Brook's Case*, *Cro. Jac.* 434. *mesme Case*.

And then admittance is to uses ; this subsequent act explains a Surrender :

Copy-holder Surrenders to the use of *M.* and *R.* without limitation of any Estate, they shall only have it for their Lives ; and in such case, if the Lord make Admittance, and deliver Seisin to *M.* and *R.* and the Heirs of *R.* this was only an Admittance to them for term of their Lives, the Reversion over to *R.* who made the Surrender, for the Lord is but an Instrument, and when he hath made Admittance according to the effect of the Surrender, nothing remains in him, but the Reversion is in the Surrenderer, 4 *Rep.* 29. *Bunting* and *Lepingwel*.

A Surrender to one for Life, without limiting the Fee, the Fee is in the Surrenderer.

But it is otherwise in the case of a Copy-holder for Life ; as if a Copy-holder for Life Surrender to the use of *J. S.* for Life, and *J. S.* dyes, this shall not revert to the first Copy-holder for Life, *Mitch.* 7. *Car.* 1. *King* and *Loder's Case*. And therefore in *Dyer*, 9 *Eliz.* f. 264. Diversity.

Lord as Occu-
pant.

f. 264. The Husband seized in the right of his Wife, Reversion to B. Reversion to C. for their Lives; the Husband surrenders to the use of B. for his Life, to whom the Lord grants it for his Life, and is admitted, and after dyes; the Husband shall not have it again during his Wives Life, for he had dismiss himself of it, and C. shall not have it during the Wives Life, but the Lord as Occupant.

Where an Use is limited, how far the Construction shall be according to the Rules of Common Law or not.

Some lay it down for a Rule, That the same Construction which the Law makes upon words in a Deed, it will make upon a Copy, is not always true, though regularly it is so. As if Copy-hold be granted to a Corporation, where no Estate is named, its a Fee-simple. So if Surrender to one and his Heirs, and he reciting this Surrender, doth Surrender it to my use in the same manner as I surrendered it to him, this is a Fee-simple. So if I Surrender to J. S. as large an Estate as he hath in the Manor of Dale, he hath a Fee-simple in that Manor, Co. Cop. 132.

The Wife shall
take by the
Admittance,
tho not na-
med in the
Premises in
the Surrender.

But a person may take by the *Hab.* in the Admittance, who was not named in the Premises, as to Copy-hold; therefore in *Brook's* Case above cited, Copy-holder Surrenders his Lands, without saying to whose use, and at the next Court the said Copy-holder was Admitted, *Habend.* to him and to his Wife in Tayl, the Remainder over. *Per Cur.* the Wife shall take by this Admittance, though she was not named in the Premises. But this Case of a Copy-hold is like to the Case of a Will, or to the

the Case of a Frank-Marriage, in which it is sufficient to pass an Estate, albeit the Parties be only named in the *Habendum*; *aliter*, where the Surrender is to Uses, and she is not named in the Premises.

And the like Rule is laid down in *Bunting* and *Lepingwel's* Case, 4 Rep. 29. That as well Estates as Descents, shall be directed by the Rules of Law, as necessary consequents upon the Custom, unless there be a special Custom to the contrary; as, a Surrender *sibi & suis* by the Custom, may make an Estate of Inheritance; but a Surrender to one *& tribus assignatis suis*, by his death, the Estate in the Copyhold is determined, *Yelverton*, p. 16. *Arnold's* Case.

As well Estates as Descents to be directed by the Rules of Law.

Though we have observed, That the passing of Estates of Copyhold is much resembled to Devises, yet an Use shall not pass in a Surrender by implication, and therefore in *Sea-good* and *Hone's* Case, *Cro. Car.* 366. A Copyhold is surrendered to the use of *F. K.* and *J. R.* Son of the said *F.* and of the longest liver of them both, and for want of Issue of *J.* the Son of his Body, lawfully begotten, the Lands to remain to the youngest Son of *M. S.* *Per Cur.* *J.* had but an Estate for Life, and being an Estate for Life, limited by express limitation, it shall not be a greater Estate by implication.

Surrender passeth not by implication.

Of Surrender to a Use upon Use.

Surrender by *A.* to the Use of *B.* and his Heirs, to the use of such person as *A.* should name by his Will, *Per Twisden* in *Leaper* and *Wroth's* Case, it is ill; no Use can be raised upon an Use, although it being Copyhold it is not executed by the Statute. But *H. nomina-*

ted by the last Will of *A.* had surrendred to *B.* the Court conceived no doubt in that Case, 1 *Keb.* 627.

Contingent Re-
mainder.

Surrender is to the Use of one in Fee upon Condition to pay 100 *l.* to a Stranger, and if he failed, it should be to the Use of a Stranger in Fee. The Question was, whether that should be a good Limitation to the Stranger, being a Fee upon a Fee. *Beaumont* conceived it to be well enough, being as an Use limited on a Feoffment, but it was found specially, *Cro. El.* 361. *Paulter* and *Cornbil*, *vide infra.*

To the Use of ones Wife

Is good, though he which is admitted is in by him who makes the Surrender, yet a man may Surrender to the Use of his Wife, because the Husband doth not do this immediately to the Wife, but by two means. 1. By Surrender of the Husband to the Lord, to the Use of the Wife. And 2. By Admittance of the Lord to the Wife, according to the Surrender, 4 *Rep.* 29. *Bunting* and *Lepingwel.*

Where a Surrender is void for the uncertainty.

Averment.

A Copy-hold was granted to a Father, and to his Son and Heirs, who at the time of the Grant had but one Son, it was adjudged a good Limitation to that Son, *Cro. Jac.* 374. *Cobb* and *Betterson.* But in *Winkmore's* Case, cited there, where a Copy was granted to *S.* the Father and to his Son, and he doth not demonstrate which of his Sons shall have it; it was adjudged to be a void Grant for the uncertainty, he having many Sons at that time.

But

But that which is wholly uncertain, no subsequent manifestation of my intention can help it, as a Surrender to the Use of my Cousin or my Friend, or to the Use of J. S. or J. N.

Surrender to the Use of a Person not in esse.

And in this point Limitations of Estates are not directed according to the Rules of Law. For at Common Law if the Grantee (immediate) and be not *in rerum natura*, and able to take by vertue of the Grant, its void presently. But though at the time of the Surrender the Grantee is not in *esse*, or not capable of a Surrender, yet if he be in *esse*, and capable at the time of Admittance, that is sufficient; as a Surrender to him that shall be Heir to J. S. or to the Use of the next Child of J. S. or to the next Wife of J. S. though at the time of the Surrender J. S. had no Child, Heir or Wife; yet if he afterwards hath, his Heir, Wife or Child may come into Court and compel the Lord to admit according to the Surrender; the reason of this Construction seems to be, the Surrender is a thing executory, and is executed by the subsequent Admittance, and nothing vests in the Grantee before Admittance; and therefore if at the time of the Admittance, he be capable to take, its enough, *Co. Copy*. Put the Case at Common Law, J. S. bargains and Sells to the Use of the next Son of J. D. and he hath no Son then, but after he hath a Son before the Deed is enrolled, yet this shall not be good, and yet its as an executory Grant, *i. e.* not perfected till enrollment, and nothing passeth till enrollment, or vesteth in the Bargainee till then, no more than by Surrender.

In this, Estates are not directed according to Law.

I will put this Case. A Surrender is to the Use of *A. B.* for Life, and after to the next Child that *J. S.* shall have. *A. B.* forfeits his Estate, *J. S.* having no Child at that time, but afterwards he hath a Child; shall this Child compel the Lord to admit him? *Q.* for such a Remainder at Common Law would be destroyed.

But a Surrender to the Use of the right Heirs of *J. S.* he being alive, is void, because it cannot take effect according to the intent of the Grantor, which is to be executed presently.

To one in
Ventre sa mere.

Surrender *Habend.* after his death, to the Use of his Child, then in *ventre sa mere*, his or her Heirs and Assigns, and if it dye before full Age or Marriage, then to the Use of another in Fee. Copy-holder dyes, Infant was born, but dyes before Age or Marriage; this is not good, he cannot make such a conditional Surrender to operate in *futuro*: But whether the Surrender to an Infant in *ventre sa mere* be good, hath been much much questioned, *Cro. Jac.* 376. 1 *Rolls Rep.* 109, 131. 2 *Rolls Abr.* 415, 416. 2 *Bulstr.* 274, 275. *Simson* and *Sotbern.* Some are for it and some against it. I conceive it is allowed to be good, as well as a Devise to an Infant in *ventre sa mere*. Surrender to the Use of *J. S.* for Life, remainder to the Use of an Infant, in *ventre sa mere*, is good.

Of a Surrender to take effect in futuro.

A Surrender of a Copy-hold in Fee, a *tempore mortis*, is void, 1 *Sanders* 151. Or a Surrender at a day to come is void.

Copy-holder in Fee Surrenders out of Court, into the hands of two Tenants in Writing, as follows.

Me-

Memorandum, *Such a day and year*, A. S. the Copyholder, Surrenders the Land, &c. to the Use of B. and C. &c. This Surrender not to stand and be of force till after the decease of A. S. *Per Cur.* If this Memorandum should be good, then this had been a Surrender at a day to come, and consequently void, and therefore the Surrender being perfect before, by the first part of the Instrument, this Memorandum shall not make it void, but the Memorandum shall be void, 2 *Rolls Abr.* 61. *Seagood and Hone.* And the Reason is given in *Simpson and Southern's Case*, *Cro. Jac.* p. 376. A Copyholder cannot Surrender an Estate to another, and leave a particular Estate himself, no more than a Freeholder, for so the Surrenderer should have a particular Estate in him without a Donor or Lessor, which by the Rule of Law cannot be, *March. Rep.* 177. *Bambridge and Whitton*; therefore *Noy*, p. 152. is not Law, *Vid.* 1 *Roll Rep.* 135.

C A P. XV.

Constructions of Surrenders as to Limitations of Remainders and Reversions. Of Contingent Remainders. Where the Hein shall be in by Descent or Purchase. Of a Surrender to the Use of ones last Will, and how to be Construed. Surrender upon Condition or Contingency. Of Surrender before Admittance. Surrender by whom, to whom, by Feme Covert. Countermand of a Surrender. What Remedy to force a Trustee to Surrender.

Construction of Sur- $\left\{ \begin{array}{l} \text{Reversion} \\ \text{Remainder} \end{array} \right\}$ Limitation.
renders as to

What shall be good to pass by the Name of a Reversion or not.

Surrender by the name of a Reversion.

Copy-holder by Licence of the Lord demised the Copy-hold to the Plaintiff for twenty years by Indenture, rendring Rent; the same Copy-holder surrendred the Reversion of the one moiety to A. and of the other to B. and they were admitted. *Per Cur.* The Surrender by the name of a Reversion was good in this Case, though the Lease was not made by Surrender (which had then been directly derived out of the customary Estate) but by Indenture, for it is still the Lease of the Copy-holder and not of the Lord, and the Rent will be divided by moities.

Husband

Husband seized of Copy-hold Land in the right of his Wife, who had the Fee, surrendered the Copy-hold Land, by the name of a Reversion, after the death of the Husband and Wife, the Surrender is void; for by that pretence there shall be a particular Estate left in the Wife, and also in the Husband, whereas the Husband had nothing before, which cannot be: And when one is seized in Fee, he cannot by any matter in Fact give away the Inheritance after his death, and so leave a particular Estate in himself: Peradventure by matter of Record he may, *Cro. Eliz. p. 29. Clamp's Case.*

One cannot leave a particular Estate in himself.

Copy-holder in Fee by Licence of the Lord, 15 Feb. 4 Jac. makes a Lease for sixty years, rendering Rent, and the Lease was to commence at *Michaelmas's* next ensuing. Lessee enters and was possessed, *Postea scil. 8. May*, the Copy-holder surrenders the Reversion to divers Uses, the Grantee of the Reversion distrains for Rent, this Grant of the Reversion seems not to be good, the Surrender being made the 8th of May, which was before the inception of the Lease; perhaps if no day had been named it had been good, *Lit. Rep. 17, 18. Mary Selby and Beck and Drewet's Case*, there cited. A Feme Copy-holder in Fee, comes into Court and offers to Surrender to F. S. in Fee, but she desires to retain to her self an Estate for Life; the Steward enters that she surrenders the Reversion of her Copy-hold to F. S. after her death, its naught, *Vide Astornment supra.*

Surrender of a Reversion bears date before the inception of the Lease.

Limitations in Remainder and Construction thereon, and of Contingent Remainder.

Remainder over good by way of Grant, and doth not depend upon a particular void Estate.

Tenant for Life and he in Remainder of a Copy-hold, he in Remainder surrenders his Remainder to the Use of Tenant for Life, and after his decease to the Use of himself and his Wife; the Estate limited to the Tenant for Life, is void, but the Estate limited to Baron and Feme, is good, by way of present Estate, and not of Remainder, 1 *Sanders Rep.* 150, 151, 152. So in *Siderfin*, p. 360. Copy-holder in Remainder surrenders to a Copy-holder for Life, Remainder over; this Remainder over, is good, by way of grant in the Estate limited to the Tenant for Life, because he had an Estate in it for his Life before; and therefore it was argued, That the Remainder limited after this particular Estate which is void in its creation, are void also. But *Per Cur.* the intent was, that Husband and Wife shall have the Land joyntly for their Lives, in possession after the death of Tenant for Life, as by mediate Settlement. A Surrender is rather in nature of a Deed Poll than of an Indenture, and enures by way of limitation of Use, & *ut res magis valeat*, *Wade* and *Bath*.

Fee upon a Fee, upon a Contingency.

A Fee may be limited upon a Fee, upon a collateral Contingent in Copy-hold Estates: As if a man surrender a Copy-hold in Fee to the Use of *J. S.* and his Heirs, who is an Infant, and if *J. S.* dyes before the age of twenty one years, or marriage, then he surrenders this to the use of *J. D.* in Fee. This is a good Remainder to *D.* upon the Contingent, 2 *Rolls* 791. *Simpson* and *Southwood*. Its made a Quære in *Stiles*, in the Argument of *Pausley's Case*, If
by

by the destruction of a particular Copy-hold, a Contingent Remainder be destroyed. *Rolls* conceived not, because it doth not depend upon the particular Estate, but ought to expect till the Remainder happen, *Stiles* 251. and there is one in *esse* to take the particular Estate. But it seems the Law to be contrary, and that if the particular Estate be destroyed the Contingent Remainder is gone: As to this,

A Surrender is to the Use of a Feme Covert, the Remainder to the right Heirs of the Body of the Husband and Wife; he in the Remainder shall not take till the Husband dyes, for he which is to have this, ought to be Heir of the Body of both, 2 *Rolls Abr.* 415. *Lane* and *Pannel*: A like Case as this is also Reported, 3 *Leon.* p. 4. Copy-holder is surrendered to the Use of the Wife for Life, the Remainder to the Use of the right Heirs of the Husband and Wife; the Husband entred in the right of his Wife. *Per Cur.* The Remainder is executed for a moiety presently in the Wife, and the Husband was seised of that in the Right of his Wife, and the Wife dying first, her Heir shall have it, but if the Husband had dyed first, his Heir should have had one moiety.

But the Case of *Lane* and *Pannel* (wherein was good Law. and nicely argued,) is better Reported in 1 *Rolls Rep.* 238, 317, 438. The Case was this: *Lane* was seised of a Copy-hold in Fee, and having a Wife, surrenders it to the Use of *Dixon* and the Wife for their Lives, and after to the Use of the Heirs of the Body of the Husband and Wife; and the Wife and *Dixon* are admitted to them and their Heirs, and after *Dixon* surrenders his moiety to the Husband and Wife, and their Heirs, upon which they

Whether
Estate Tayl
Executed, or
rests in Con-
tingency.

Severance of
a Joynture.

they were admitted ; and afterwards they Surrender it to the Use of one *Davis* in Fee, who was admitted ; then the Wife dyes having Issue, and after the Husband dyes, the Heir brings an Action of Trespass ; its not maintainable. The great Question was, whether the Wife had an Estate Tayl executed (vested) in her. *Per Coke*, its Estate Tayl executed in the Wife ; but by the Reporter it seems it is not executed but rests in contingency ; the Case as to that is but this : A man gives Lands to the Use of his Wife for Life (for as to this, the Estate of the Stranger is not material,) and after to the Use of the Heirs of the Body of the Husband and Wife, begotten ; (for had it been to the Use of the Wife for Life, the Remainder to the Use of the Heirs of the Wife by the Husband begotten, it had been no Question) he which is to have this, ought to be Heir of both their Bodies, which cannot be before the death of both ; and then it may so happen, that this Remainder shall never take effect, for if the Wife dye who had the particular Estate, during the Life of the Husband (as it was here) her Heir of her Body cannot take it, because he is not Heir of the Body of the Husband also, and then he not being capable of the determination of the particular Estate, he shall never have it, and where an Estate rests upon Contingency this may not be executed before the Contingency happen. *Per Cur.* when the Wife and the Estranger are admitted in Fee, this doth not alter the Estate, but they shall be seized according to the Surrender. And when *Dixon* surrenders his moiety to the Use of the Husband, this was a severance of the Joynture, between him and the Woman, and the Husband aliening the whole to the Defendant

Defendant, he had a moiety for the Life of the Wife, defeazable by the Wife, and the other moiety for the Life of *Dixon*, and after when the Wife dyes, the Estate of *Pannel* is determined, as to one moiety, and on this the Remainder ought then to have vested; but the Plaintiff being Heir of the Body of the Wife begotten by the Husband, cannot take the Remainder which was limited to the Heirs of the Body of the Baron and Feme, during the Life of the Husband, because *non est heres viventis*, and he which takes this Remainder ought to be Heir of both their Bodies, or otherwise he shall not take it at all, and therefore the Remainder is destroyed, as to this moiety.

Remainder destroyed, because not vests on the determination of the particular Estate.

As to the Admittance of him in Remainder, *Vide* Admittance.

Note, The possession of a Lessee for years, is the possession of him in Remainder, yea, so as to make a *possessio fratris*, *Modern Rep.* 102. *Blackburn* and *Greaves*.

Where the Heir shall be in by Descent or Purchase.

It is a common diversity in our Law, where a Man surrenders to the Use of himself for Life, and afterwards to another in Tayl, the Remainder to the right Heir of him who surrendreth, there his Heirs shall have it by descent; otherwise, where the Surrenderer hath not an Estate for Life, or in Tayl, there his Heir shall enter as a Purchaser. To illustrate this by a Case or two:

A Copy-holder surrendred his Lands to the Use of a Stranger for Life, and afterwards to the Use of the right Heirs of the Copy-holder, who afterwards surrendred his Reversion to the Use

Use of a Stranger in Fee, and dyed, and Tenant for Life dyed, the right Heir of the first Copy-holder entred. *Per Coke*, nothing remained in the Copy-holder upon the first Surrender, but the Fee is reserved to his right Heirs, for if he had not made any second Surrender, the Heir should be in, not by Descent, but by Purchase, *1 Leon. Allen and Palmer.*

Heir.

A. seized in Fee of a Copy-hold, surrenders this to the Use of his last Will, and after by his last Will devised it to *B.* for Life, and after his death to the Heir of his Body begotten for ever. *Per Cur.* The word (Heir) being limited to the Body of *B.* is *nomen collectivum*, and all one with the word Heirs, and so *B.* had a Fee executed, and his Heir shall have this by Descent and not by Purchase: And it is not like to *Archer's Case, 1 Rep.* Where the Devise is to *B.* for Life, and after to his Heir Male, and to the Heirs Males of such Heir Male, for there the Inheritance is limited to the Heir Male of the Body of such Heir Male, *Stiles 249, 271. 2 Rolls Abr. 253. Powlsy and Lowdal.*

Not a good Remainder within the Custom.

A Copy-hold which by Custom was demisable for three Lives, was demised to one for Life, the Remainder to such a Wife as he shall marry, and to the first Son of his Wife, *Per Cur.* These two Remainders are void, but the Estate for his Life was good, *More, n. 1922, Webster and Allen, Vide supra.*

Of a Surrender to the Use of one's last Will, and how to be construed.

A man cannot devise Copy-hold Estate to transfer it by his last Will only, but he must Surrender it *in Manus Domini*, to the Use of his last Will, and then he may devise it to whom he pleaseth; but its apparent that nothing passeth by the Will, but all by the Surrender; and the Will is only a Declaration of the Uses of the Surrender, 1 *Bulst. p. 200. Se-main's Case*: But if a Copy-hold be devised without Surrender, it cannot be executed in point of Interest, but only by Decree in *Chancery*, 2 *Keb. 837. Harrison and Grosvenor*. Decreed.

But a Custom, that a Copy-holder shall Devise his Land, is not good without Surrender, p. 35 *Eliz. E. R. Rot. 334. Wrot's Case*.

A man seized of Copy-hold Lands, devised a certain parcel of them to his Wife for Life, the Remainder to his Brother and his Heirs, and afterwards in presence of three persons of the Court, said to them, *I have made my Will, and have appointed all things in my Will as I will have it*; and afterwards he said, *And here I Surrender all my Copy-hold Lands into your Hands accordingly*. *Per Cur.* The Surrender is restrained by the Will, and not all his Copy-hold Lands, but only so much as are mentioned in the Will, pass to the Wife, 3 *Leon. p. 18.* A general Surrender restrained by the Will.

Copy-holder in Fee surrenders into the Hands of a Tenant, according to the Custom, to the Use of a Will, which he said he would make and leave in the Hands of his Partner *Moss. Moss dyes*, and after the Copyholder makes his Will, and recites the Surrender; it seems

Words of
Demonstrati-
on, and not
of restraint.

seems that the Devisee shall have the Lands, for the words, That he would leave in the Hands of *Moss*, are words of demonstration, and not of restraint; and then it is a ground in our Law, *When an act is to be done, with reference to another thing, which is impossible, illegal or variant, the act shall stand, and the reference shall be void*, Lit. Rep. p. 23. Littleton against Eaton.

Let us see now when a man hath surrendered to the Use of his last Will, how the Estate stands in the Surrenderer.

Copy-holder surrenders to the Use of himself, for Life, and after to the Use of R. his Son for Life, and after to the Use of his last Will. R. dyes, the Father afterwards surrenders it to the Use of J. S. in Fee, and dyes, without making any Will. Its a good Surrender, for a Copy-holder may surrender parcel of the Estate, and the residue shall be in himself, and the Fee Simple of the Copy-hold being limited to the Use of his Will, remains in the Copy-holder, and not in the Lord, *Cro. El. 441. Co. 4 Rep. 23. Finch and Hockly*, and that the Fee lyes not in the Lord, is *Bullen and Grants Case, 1 Leon. p. 174.* When one surrenders to the Use of his last Will, and thereby deviseth Copy-hold Lands to his middle Son, and the Heirs of his Body, who dyes without Issue, and the Lord grants it to the youngest, the eldest Son may enter, and Admittance is not necessary.

Copy-hold
devised to pay
Debts.

J. S. seized in Fee of Copy-hold Lands, devised it to his Wife for Life, and that she should sell the Reversion for the payment of his Debts, and after in Court did Surrender the Lands to the Use of his Wife, for Life, according to the Will and Deed, she may sell the Land; he surrendered and referred to the Will,

Will, and the surrendred upon Condition to pay 12. l. this was held to be a good Sale, according to the Will. Cro. El. 68. *Bright and Hubbard.*

By Joynt-Tenants.

If there be two Joynt-Tenants, and the one Surrenders into the Hands of two Tenants to the Use of his last Will, and makes a Will of the Land, and dyes; the Surrender is afterwards presented. *Per Cur.* Its a severance of the Joynture, and shall bind the Survivor, for being presented, it shall relate to the first time of the Surrender, Cro. Jac. 800. *Porter's Case, 1 Brownl. Rep. 127. Allen and Nash.*

Pleadings.

Quod tenens customar. in feodo possit devisare in feodo pro termino vite vel annorum, Coke Ent. 124.

Surrender upon Condition or Contingency.

Copy-holder may Surrender to the Use of another, on Condition, if the Copy-holder pay to the Surrendree, &c. *ad Domum suam Mansionalem, &c.* that then the Surrender shall be void, 5 Rep. 114. *Wade's Case.*

Condition;
Re-entry for
non-payment
of Rent.

A Copy-holder may Surrender to the Use of another, reserving Rent, with Condition of re-entry, for non-payment, and for default of payment, he may re-enter, 4 H. 6. 11. 21 H. 6. 37.

A Copy-holder surrenders upon Condition, and afterwards by his Deed releaseth the Condition; its good without surrender, for properly a Right or Condition cannot be given or determined by Surrender but by Release

lease, *Cro. Jac.* 36. *Hull and Shardbrook*, 4 *Rep. Kite and Quinton*.

Surrender to the Use of one in Fee, upon Condition to pay 100 *l.* to a Stranger; it was a Question, if the tender of 100 *l.* to a Stranger, and he refusing, the Condition is saved? By *Beaumont*, it is saved, *aliter*, in Case of an Obligation, where he takes upon him to do it, *Cro. El. p.* 361. *Paulter's Case*.

K. L. Father of the Defendant, Copyholder in Fee, surrendered to the Use of the Defendant in Fee, upon Condition he should perform the Covenants in such an Indenture; the Defendant was admitted, and after surrenders the Land to the Use of the Plaintiff in Fee, upon Condition if the Defendant paid 10 *l.* the Surrender to be void. The Defendant neither paid the 10 *l.* nor performed the Covenant in the Indentures. The Father enters and dyes seized, and it descends to the Defendant, and he enters, upon whom the Plaintiff enters: The Question was, if this Entry were lawful, and adjudged it was not; for by the Entry of the Father both the Surrenders are defeated. So the Defendant may confess and avoid what was done to the Plaintiff, Judgment *pro Defendente*, *Cro. Eliz.* 239. *Simonds and Lawnd*, *Trin.* 33. *Eliz.*

Additional
Surrenders
defeated by
Entry.

One cannot
pass a Copy-
hold Estate to
begin at a day
to come, no
nor upon a
Contingency.

A Copy-holder saith, he surrenders his Copyhold Estate, and if his Child which shall be Born dyes before his Age of 21 years, that then his Brother shall have it; its not good. This Case falls upon a Rule in Law, That one cannot pass a Copyhold Estate to begin from a day to come, nor yet upon a Contingency, no more than a Freehold at Common Law, 2 *Bulstr.* 274. *Simpson and Southern*.

If

If a Copy-holder surrenders his Copy-hold of Inheritance into the hands of the Lord, to the Use of J. S. paying of an 100 l. to his Executors, within such a time after his death, he to whose Use this Surrender is made, takes by force of this presently, *Per Dodridge, 2 Bulst. p. 275. idem Case.* Use vests presently, the Condition to take effect in futuro.

Surrender upon Condition or Contingency.

Copy-holder may surrender to the Use of another, on condition if the Copy-holder pay 250 l. *ad domum suam mansionalem, &c.* that then the Surrender shall be void, 5 Rep. 114: *Wade's Case.*

At the above

A Copy-holder may surrender to the Use of another, reserving Rent, with condition of re-entry for non-payment, and for default of payment, he may re-enter, 4 H. 6. 11. 21 H. 6. 37. Condition of re-entry for non-payment of Rent.

A Copy-holder surrenders upon condition, and afterwards by his Deed releaseth the condition, its good without surrender, for properly a right or condition cannot be given or determined by Surrender, but by Release, *Cro. Jac. 36. Hull and Sharebrook, 4 Rep. Kite and Quinton.*

Surrender to the Use of one in Fee, upon condition to pay 100 l. to a Stranger; it was a Question if the tender of the 100 l. to the Stranger, and he refusing, the condition is saved. By *Beaumont* it is saved; *aliter* in Case of an Obligation, where he takes upon him to do it, *Cro. El. p. 361. Poulter's Case.*

The Form of a Surrender of Copy-hold Land upon Condition, *Vide Conveyancers Light, p. 827. Vide infra Presidents.*

Of Surrender before Admittance, whether it shall be good or not?

Purchaser hath nothing before Admittance, neither can he Surrender.

A Surrender to J. S. J. S. Surrenders to a Stranger, who is Admitted. The Stranger takes nothing, for J. S. had no Estate before Admittance, and the right and possession still remains in him who surrendred, and this shall descend to his Heir. But the diversity is, an Heir to whom a Copy-hold descends or comes in remainder, he may surrender before Admittance, because he is in by course of Law, for the Custom which makes him Heir to the Estate casts the Possession upon him, from his Ancestors. But a Stranger to whom the Copy-hold is surrendred, had nothing before Admittance because he is a Purchaser, and the Copy made to him upon his Admittance is his Evidence by the Custom; and before this he is not a customary Tenant, and so he can transfer nothing to another. *Relu. p. 144, 145. Wilson and Weddel. Cro. Jac. p. 36. Joyner's Case.*

The Heir may surrender the Reversion before Admittance.

Copy-holders Baron and Feme to them and the Heirs of the Husband: Husband dyes, the Heir may surrender his Reversion into the hands of two Tenants, out of Court, (if the Custom be so,) before any Admittance, and during the Life of the Wife, and its a good Surrender, for the Reversion was cast upon him by the Surrender, before any Admittance, *1 Rolls Abr. 499. Calchin and Calchin.*

Surrender, by whom.

By Infant.

An Infant who Surrendred his Copy-hold Land within Age, may enter at his full Age, without being put to any Suit for it, *Popbam. p. 39.*

Infant within Age, surrenders to the Use of another, its not good, in *Chancery, Mich. 9 Jac. Hogbs and Carpenter. Baron*

Baron seized of Copy-hold in right of his Feme, in Fee, surrenders without his Wife, to the Use of J. S. in Fee, who was Admitted; Baron dyes, VVife dyes, the Heir of the VVife enters, and makes a Lease; and good; this was not any discontinuance against the VVife, to put the Heir to his Plaint, in nature of a *sur cui in vita*. That Action is given, where Recovery by default is against the Baron and Feme, *Popham 39. Bullock and Dibler.*

By Husband of the Wives Land.

Copy-holder *pur vie* Surrenders to the Use of another, there can be no possibility of having it again, if he survive; for the Surrenderer is meerly in by the Lord, and not by the Copy-holder; but if a Copy-holder in Fee surrender to the Use of another, for Life, who is admitted, he is in *quasi* by the Copy-holder, and by his death the Copy-holder shall have it again, *Cro. Car. 204. King and Lord.*

By Copyhold: or for Life.

Tenant for Life of a Copy-hold, where the Remainder is over, may surrender to the Lord, *9 Rep. 107. Podger's Case.*

A Feme Covert and J. S. are Tenants for Life of a Copy-hold, and J. S. surrenders his moiety to the Husband of the VVife; this is a severance of the Joynture, so that he is Tenant in Common with his VVife, *2 Rolls Abr. 88. Lane and Pannel.*

By Joynt-Tenants.

Two Joynt-Tenants of a Copy-hold, and the one surrenders his moiety into the Hands of the Lord, to the Use of his last VVill, and thereby deviseth it to another; this is a good Devise, because by the Surrender the Joynture was severed between them, *Co. Lit. 59. b.* So if there are two Joynt-Tenants in Fee of a Copy-hold, and the one Surrenders his part out of Court, into the Hands of the Lord, to the Use of his last VVill, and by his last VVill

afterwards deviseth it to the Use of a Stranger in Fee, and after at next Court the Surrender is presented; by the Surrender and Presentment the Joynture was severed, and the Devisee ought to be Admitted to the moiety of the Land, for now by relation the State of the Land was bound by the Surrender, *Co. Lit. 59 b. Constable's Case*, cited there.

Where a Copy-hold granted by a Disseisor, &c. shall be good, and stand in force against the Disseisee, and where not.

By Disseisor,
&c.

Tenant for Life, Remainder for Life of a Copy-hold, the Remainder man for Life enters upon Tenant for Life in possession, and makes a Surrender; nothing at all passeth hereby; for by his Entry he is a Disseisor, and hath no customary Estate in him whereof to make a Surrender, *Mod. Rep. 199. Bird and Keck.*

Of the lawful
Lord, who
can make
Grants and
admit upon
Surrenders.

This diversity was unanimously agreed. If Disseisor or Feoffee of a Disseisor, or any other who has a tortious or defeasible Estate, or Interest subject to the Action or Entry of another, hold Court, and make any voluntary Grant upon Escheat or Forfeiture of a Copy-hold, such voluntary Grant shall not bind him that had right, when he shall re-continue the Manor by Action or Entry; for to this intent the said Custom shall be intended of a Lord which had a lawful Estate or Interest; but if such Lord who had a tortious or defeasible Estate, admit any upon Surrender made to the Use of another, or give Admittance to the Heir upon a Descent, such Admittance shall be good, and within the Custom; for such acts are lawful, and *quodammodo judiciales*, and which he may be compelled to do in a Court of Equiry, *4 Rep. 23. b. Clark and Penyeather.* So every one who had

a lawful Estate or Interest in a Manor (*Dim. pro Tempore*) both in Fee or Tayl, or Dower, or by the Curtesie, or for Life, or Years, or as Guardian, or Tenant by the Statute, or Elegit, or at Will. Otherwise of Tenant at Sufferance: For if there be Tenant *pur auten vie*, of a Manor, and *Cesty que vie* dyes, and the Tenant continue in the Manor, and hold Courts, and makes voluntary Grants, by Copy, this shall not bind the Lessor; *aliter* of Admittance upon Surrender, or upon Descent, 4 Rep. 24. Rous and Archer's Case; such Grants shall not be avoided by disability of the person, or defect of Interest, or exility of the Estate of the Lords (as at VVill, *sur condition*, &c.) 8 Rep. 63. Swain's Case: Or whether it were granted by *non compos mentis*, Infant, Bishop, Parson, *non sane memorie*, &c. it is not material in Surrenders, *Vide supra in Tit. Lords Grants*. If a Copyhold Escheat or come into their Hands during their time, they may re-grant it, *reddendum* the ancient Rents, Customs and Services, and this shall bind the Lord who had the Inheritance or Freehold, 4 Rep. *ibid*. So such Grant by Baron and Feme shall bind the VVife, notwithstanding the Coverture; So a Grant by a *non compos mentis*, a Bishop, Infant, and so Feme Covert, *non sane memorie*, Infants, Successors of Bishops, Parsons, Prebends, are bound by the said Custom, it being that the Tenements *sunt dimiss. & dimissib. per Dom. Manerij pro tempore existen*, &c. *ibid. vide supra*.

By a Feme Covert.

A Tenant out of Court cannot take a Surrender of a Feme Covert, for that she is secretly to be examined by the Steward, *Totbil*, p. 108. unless by special Custom.

*Sola & secreta
examinat.*

The Surrender of a Feme Covert being so le examined, shall bind her; but whether such a Surrenderer, upon her examination made before two Tenants of the Manor, such Surrenders before them, being used to be made, be good, was the Question in the Case of *Erish and Rives*, *Mieb.* 41 *El. B. C.* and *Per Cur.* by special Custom to warrant it, it may be good.

By Infant, *Vide supra.*

By the Husband of the
Wives Land,
Quid operatur.

Feme Tenant for Life of a Copy-hold, the Reversion being granted over to *B.* for Life, Remainder to *C.* for Life, *cum acciderit post mortem sursum redditionem vel forisfacturam* of the Feme, and after the Husband Surrenders to the Use of *B.* for Life, and so he is Admitted Tenant, and after dyes. In this Case *C.* shall not have this, because his Estate is not to commence till after the Death, Surrender, or Forfeiture of the Feme; and the Feme here is in Life and had not made any Surrender or Forfeiture, and the Wife had right in this in the nature of a *plaint de cui in vita*. But the Lord in this Case may retain it in his own proper hands or disposition, during the Life of the Husband, *quasi an Occupant*, *Dyer* 9 *El.* 264 *Seck.* 38.

Occupant:

Surrender, to whom.

To the Wife.

By the Husband to the Use of the Wife is good, *vide supra*, and 4 *Rep.* 29. *Bunting's Case*, for it is done by Surrender to the Lord and Admittance.

To the Steward.

A Surrender made to the Steward, to the Use of the Steward, is good, for the Entry is, *quod sursum reddidit in manus Domini*, and the Steward is but the Lords Servant, and the surrender is to the Lord, and not to him, *Cro. El.* p. 717. *Erish and Rives*.

So Infant, *Vide supra.*

Of

Of Countermand of a Surrender.

Where the Surrender of a Copy-hold may be Countermanded by the Party himself, and what collateral Act without the assent and privity of the Party shall be a countermand, and where, and what not.

Grant by Baron and Feme shall bind the Feme notwithstanding the Coverture: so Grant by *non compos mentis*, Infant, *Vide supra*.

Vide supra. Where and what Grants by Lords of Manors shall be good or defeasible in respect of the Estate they had therein.

Surrender is not Countermanded by the death of Surrenderor before Presentment, 4 Rep. 29 *Bunting's Case*.

Where the Customs are not pursued, the surrenders are void, *Vide sparsim*, and 5 Rep. 84. *Peryman's Case*.

Surrender by Steward or Deputy Steward and of pursuing their Warrants, *vide Steward, supra*.

What remedy to force a Trustee to Surrender.

A Copy-holder doth surrender to the Use of one *A.* in Trust, that he shall hold the Land until he hath levied certain Monies, and that afterwards he shall surrender to the Use of *B.* The Monies are levied. *A.* is required to make surrender to the Use of *B.* he refuseth, *B.* exhibits a Bill to the Lord of the Manor against *A.* who upon hearing of the Cause Decrees against *A.* That he shall Surrender; he refuseth: Now the Lord may seize, and admit *B.* to the Copy-hold, for he in such case is Chancellor in his own Court, *Per totam Curiam*, 1 Leon. 2. Or relief may be had in Chancery.

In the Lord's Court.

C A P. XVI.

Of Presentment. How and when to be made. How to be pursuant to the Surrender. What the Law is if Surrenderor or Cesty que use, or the customary Tenants, into whose Hands the Surrender was made, dye before Presentment or Admittance. VVhere two Surrenders are, and the second Surrender is presented first.

Presentment.

No good Surrender till presented.

IF the Surrender be made out of Court into the Hands of the Lord himself, which the general Custom will warrant, or into the Hands of the Bayliff, or of two Tenants of the Manor (which is warrantable only by special Custom) there must be a true Presentment of the Surrender in Court, by the same Persons into whose Hands the Surrender was made, and the Admittance of the Lord must be according to the effect and tenor of both the Surrender and Presentment. It is not an effectual Surrender till it be presented in Court. And therefore in an Action on the Case on Assumpsit, in Consideration that the Plaintiff would surrender to the Defendant and his Heirs a Copyhold according to the Custom of the Manor, Defendant assumed to pay 500 l. and for breach of this promise the Plaintiff brings the Action and had a Verdict; but Judgment was arrested, because the Consideration on the Plaintiffs part was not performed; for the Consideration was, That he should surrender the Copy-

Copy-hold to the Defendant and his Heirs, and he hath alledged the surrender to be into the Hands of a Copy-hold Tenant of the Manor, to Use of the Defendant, which is no surrender untill it be presented at the next Court, and so it is uncertain whether it shall take effect or not, *Stiles, p. 256. Shaan and Shaan.*

The Presentment by the general Custom of Manors is to be made at the next Court day, immediately after the surrender; but by special Custom, at the second or third day afterwards, and by *Rolls in Jay's Case, Stiles 275.* there is no certain time, but as the Custom is, so that it be within the Life of the Tenant, it is to be made by the same persons that took the Surrender, and in points material, according to the true tenor of the Surrender.

When to be made.

But if the Surrender be conditional, and the Presentment absolute, the Surrender, Presentment and Admittance are void, except the Steward in the entry of it omits the Condition, and upon sufficient proof made in Court of that, the Surrender shall not be avoided, but the Roll amended, and this shall be no conclusion to the Party to plead, or give in Evidence the truth of the matter, *4 Rep. 25. Kite and Quinson.*

Presentment must pursue the Surrender.

But in *May's Case, Norf. Summer Assises, 1663.* The Custom of a Manor was for a Copyholder *in extremis* to surrender into one Tenants Hands in the presence of credible Witnesses, and a Surrender was made accordingly, but presented to be done to another Tenant, yet being proved to be done to a Tenant of the Manor; It was holden by *Wadham Windham* Justice to be good.

Of Presentment where the Surrenderor or Surrendree, Cesty que use, or customary Tenants dye before Presentment or Admittance.

**Surrenderor
dyes.**

If one Surrender out of Court, and dye before Presentment, if Presentment be made after his death, this is good, 4 Rep. 29. *Bunting's Case.*

**Cesty qui use,
dyes.**

If (*Cesty que use*) he to whose Use the Surrender is made, dyeth before Presentment, yet upon Presentment made after his death, his Heir shall be admitted, *Stiles, p. 145. Barker and Denban.*

**Surrenderor
and Cesty qui
use, both dye:**

If one Surrender out of Court, to the Use of one for Life, the Surrenderor and the Lessee for Life both dye before the Presentment, yet upon Presentment made, he in Remainder shall be Admitted.

**Surrendree]
dyes.**

Surrendree dyes before Admittance, his Heir may be Admitted, and if it be Burrough-English, the youngest Son, 2 *Siderfin*, 38, 61.

**The Tenants
into whose
hands the Sur-
render was
made, dye.**

If the Tenant, into whose Hands the Surrender was made, dye before Presentment, yet upon sufficient proof made in Court, That such a Surrender was made, the Lord shall be compelled to admit, *Co. Lit.* 62.

**Nothing pas-
seth till pre-
sentment.**

But nothing passeth till Presentment. Therefore *T. H.* was Copy-holder in Fee, and surrendered out of Court into the Hands of *H. B.* and *W. J.* two Copy-holders of the Manor, to the Use of *R. W.* in Fee. *R. W.* entred and paid the Rent to the Lord. *T. H.* who surrendered, dyed. *H. B.* and *W. J.* who took the Surrender are dead. The Heir of *T. H.* entred. *R. W.* re-enters. *Per Cur.* By the Surrender into the Hands of two Tenants, nothing passed until it was presented in Court, and in the

the *interim* the Interest remains in him who made the Surrender, which Interest descended to the Heir, and the acceptance of the Rent by the hands of *Cestuy que use* gives not any Interest unto him ; and there is no Estate in *Cestuy que use*, but an Inception, until this Surrender be presented in Court : But they held also, That it was not of necessity, that the Parties who took the Surrender should present it ; and although they are dead, and the Party who made it is dead, yet (as the Custom is found) if it be presented by any other Copy-holder when the Court is held, its well enough, and he may be thereupon admitted, *Cro. Jac.* 403. *Froswel* and *Welch*, and so is *Buntings's Case*, 4 *Rep.* so resolved : And *Cestuy que use* shall procure a Court to be held for his own advantage, 1 *Bulst.* 215. *mesme Case*.

Two Joynt-Tenants in Fee of a Copyhold, *cestuy que use* to and one surrenders his part into the Hands of procure a the Lord, to the Use of his last Will, and after Court to be deviseth this to another in Fee, and dyes, held for his own advantage. and after at the next Court this is presented, the Devisee shall have it ; for now by relation the Joynture was severed, and the Estate of the Land bound by the Surrender, *Constable's Case.* *Rolls* 1 *Abr.* 501. So *Cro.* 30 *Jac.* *Mich.* *Porter's Case.*

Custom for a Copy-holder to Devise, and if the Will be not presented within a year and a day next after, the Devise to be void ; they were several Customs, and so differ from *Peyrman's Case*. Now suppose no Court be holden in that time, *Carter's Rep.* 71, 72, 88. *Smith* and *Painton*. It shall be presented at a Court within the year, or at next Court after the year ended, else it shall be void, 5 *Rep.* 84. 2 *Anderson* 125.

In

In *Perryman's Case*, 5 Rep. 84. It is a Question, what remedy if the Copy-holder will not present the Surrender made out of Court? the Answer is, *Carveat emptor*; but certainly there is good remedy in Equity, as in all Cases of Trustees or Instruments of Conveyance.

The Custom is, That it should be presented at next Court, otherwise it was void. One surrenders his Copy-hold into the Hands of two Tenants out of Court, upon condition of payment of Money 25 July after to be void. After he surrenders out of Court to the Use of J. S. the Money was paid before the 25 of July. Then he surrenders to the Use of a third person before the payment. At the next Court the surrenders were presented, but not the first, and the Lord grants Admittances severally to these two Persons. *Per Cur.* The second Surrender was good, for nothing by the Surrender out of Court was divested out of him that surrendered, until the Surrender was presented, but he was absolute Owner to bring Trespass or any other Action, and then that not being presented, and the second was presented, the first Surrender was void, and the second was good, *Jones* 306. 1 *Rel. Abr.* 500. *Burgis and Spurlin's Case*. *Cro. Car.* 273, 283. *mesme Case*.

Two Surrenders, and the second Surrender presented first.

C A P. XVII.

Of Admittances upon Voluntary Grants, Surrenders, Descents. By whom Admittances upon Surrender made shall bind. In what Cases the Admittance of the one shall be the Admittance of another. Of Admittance by Attorney. Admittance where to be made. Of Admittance upon Descent: The time of Admittance. What things the Heir may do or not do before Admittance. In what Cases, and to what purposes the Copy-hold Estate shall be in the Tenant, and to what purposes not. And what Leases, &c. made by them shall be good, and in what Cases the Lord shall be compellable to make Admittances, and where not.

Of Admittances on voluntary Grants.

NOTE, a diversity between the Heir who comes in course by Descent, and another Stranger who comes in by Surrender, and hath these words, *Dominus concessit & admissus est*; but when the Heir of a Copy-holder is to be Admitted, he hath only these words, *Et admissus est*.

Admittances are of three
forts, upon a

} Voluntary Grant.
} Surrender,
} Descent.

As to voluntary Grants made by the Lord, in some sense he may be said to be the absolute

solute Owner of the Land, and may dispose of it at his pleasure, yet he is bound to observe the Custom of the Manor in his Grants, neither can he alter the Estate or Tenure.

If the Custom doth warrant an Estate to a Woman *durante viduitate* only, and the Lord admits for Life, this shall not bind his Heir.

The Custom
must be pur-
sued.

So in Reservations according to the accustomed Rent, the Lord must strictly pursue it; as where he reserves 10 s. where the usual Rent was 20 s. So where the Rent has been customably paid at four Feasts, and the Lord reserves it at two Feasts, these are void. So if two Copy-holds Escheat to the Lord, the one of which hath been usually demised for 20 s. rent, and the other for 10 s. and he granteth them both by Copy for 30 s. its not good.

But in this kind of Surrender, the Lord is not considered barely as an Instrument, because he is not bound to dispose the Land but to whom he pleaseth, yet he is an Instrument in respect he is tyed unto Custom; but in the other sort of Surrender he is barely an Instrument.

Where to be
made.

The Lord himself may grant or make Admittances out of the Manor, at what place he pleaseth, but so cannot the Steward, 4 Rep. 26, and 27.

Several Te-
nures and se-
veral Fines.

The Lord admits, *Tenenda per antiqua servitia inde prius debita, & de jure consueta*. And if the Tenures are several, the Fines must be several.

In *Westwick's Case*, 4 Rep. The Entry of the Roll was, *Ad hanc curiam venerunt Willielmus Westwick & Johanna Uxor ejus & ceperunt de Domino Tenementa præd. cum pertin. in quibus, &c. prefat. Willielmo Westwick & Johanne Uxori ejus Tenend. eisdem Willielmo & Johanne & hæredibus suis, &c.* When the Surrender was to the Use of William Westwick in Fee, yet the Admittance shall

shall enure only to the Husband, for the Lord can but make Admittance *secundum formam & effectum sursum redditionis, de quo vide in Cap. Surrenders.* The Admittance must be pursuant to the Surrender.

Cestuy que use cannot surrender before Admittance, and the Entry of the Surrenderer doth not make an Admittance, it being entred thus, *Compertum est per homagium, &c.* and not as its usual, *dat. Domino de fine & fecit fidelitatem & admissus est inde tenens*, at the end of Popbam, p. 127, 128. Rawlinson and Green.

Of Admittances upon Surrender.

The nature of it will be Explained by two or three Rules.

I. The surrender of a Copy-hold to J. S. Till admission hath no effect till J. S. be admitted Tenant; the Tenant hath no Estate. therefore if J. S. before he is admitted, surrenders to J. B. who is admitted; this avails nothing to J. B. for J. S. himself had nothing, and so can pass nothing, and the Admittance of his Grantee shall not be taken by implication as Admittance to himself, for the Admittance ought to be of a Tenant certainly known to the Steward, and entred in a Roll by it self, and in such case the Right and Possession remains still in him who surrendred, and descends to his Heir; he to whom the Copy-hold is surrendred, comes in as a Purchaser, and his Copy is his Evidence by the Custom, and till he is admitted, he can be no customary Tenant, and therefore can transfer no right to another, Yelverton 145. Wilson and Weddel. I Brownlow 143. *Aliter in Case of Descent, Vide infra.* *Aliter in Case of Descent* The Admittance of a Copy-holder is compared to the Induction to a Benefice, which gives

gives Possession. At the end of *Popbam*, p. 127, 121. *Rawlinson and Green*, That Case was, Copy-holder surrendered his Copy-hold Estate to the Use of another, which was presented at next Court, and found by the Homage, and he to whose Use the Surrender was made, was there in Court accepted by the Steward, and a Copy by him granted unto him; afterwards he to whose Use this Surrender was made, surrenders the same again to the Use of another, which was presented, and a Copy granted to him, and he accepted as a Copy-hold Tenant, but no Admittance Entred, as *Cepit de Dom. & admissus est inde tenens, &c.* Per Cur. Heto whom the first Surrender was made, had no Estate in him before Admittance, and whether and how far he might transfer this Interest, *Curia dubitav.* and whether what was done to the second Surrendree is not an assent by the Lord to the first Surrenderer? It was granted, That if the Steward accepted a Fine as of a Copyholder, it amounted to an Admittance, 3 *Bulstr.* 237. *mesme Case.*

II. Surrenders of Copy-holds are not to be likened to Surrenders at Common Law; for if a Copy-holder in Fee surrenders to the Use of another for Life, nothing more passeth out of him than shall serve the Estate limited to the Use, and he which made the Surrender shall not pay any Fine for re-Admittance to the Reversion, for this continues always in him, 9 *Rep.* 107. *Margaret Podgers Case.*

III. The Lord hath a bare customary power to admit *secundum formam & effectum sursum reddit.* Therefore if there be any variance between the Admittance and Surrender, either in the Person or the Estate, or in the Tenure, its void, &c. The Lord doth only transfer an Estate

Note
If a Steward accepts
of a Fine of a Copy-
holder it amounts to
admittance.

Estate according to the Surrender. If *J.* surrender to the Use of *J. S.* and the Lord admits *J. N.* this Admittance is wholly void, and yet the Lord may afterwards admit *J. S.* according to his Authority; but had he admitted *J. S.* and *J. N.* jointly, then the Admittance had been void for the one, and good for the other, *Co. Cop.* 127.

If a man surrender to the Use of *J. S.* and *J. D.* for their Lives, the Remainder over to another; and *J. S.* and *J. D.* are admitted in Fee, yet this doth not alter their Estate, but they shall be seised according to the Surrender, *1 Rolls Rep.* 317. *Lane and Pannel.*

Surrender is upon Condition, the Presentment is absolute, and the Admittance is absolute; the Presentment was void: But the Surrenderors Release to *Cestuy que use* shall make his Estate good, *Vide supra*, 4 *Rep.* *Keil* and *Quinton.*

If the Lord after Surrender grants to *Cestuy que use*, and to Stranger, all shall enure to *Cestuy que use*; or if he admit the *Cestuy que use* upon a Condition, the Condition is void, for after Admittance he is in by him that made the Surrender. So if a Copy-holder surrender to the use of another, *pur vie*, and the Lord admit him, to hold to him and his Heirs, yet *Cestuy que use* had but an Estate for Life, for he is in after Admittance by force of the Surrender, 4 *Rep.* *Westwick* and *Wier.*

Note, A Copyhold Estate cannot be surrendered to another by an Attorney, without Deed, but one may be admitted to a Copyhold Estate, by Attorney, without Deed, *Stiles Pract. Reg.* 74.

Where the Lords Admittance of a Copyholder, in other manner than agrees to the Surrender shall be good, and how it shall be construed and enure. Admittances as to Limitations, alter not the Estate, for he is in by force of the Surrender.

By whom Admittance upon Surrender may be made and shall bind.

By those that have defeasible Titles.

Admittances made by Disseisors, Abators, Intruders, Tenant at sufferance, or others, who have defeizable Titles, are good against them who have Right, because these are lawful Acts, and they were compellable to do the same, *Co. Lit.* 58. b.

If Disseisor of a Manor accept a Surrender of a Copy-hold of Inheritance to the Use of another and his Heirs, and he admits *Cestuy que use* accordingly; this is good, and shall bind the Disseisee, *p. 40 Eliz. B. R. Martin and Rieve, 4 Rep. 24.*

If A. Copy-holder for Life surrender to the Disseisor of a Manor, to the Use of another, for the Life of A. and the Disseisor admits him accordingly; this shall bind the Disseisee, *ibid. Martin's Case*: But without Admittance it shall not bind.

Surrender by Dom. pro tempore, and his Estate determines before Admittance.

If the Lord *pro tempore* of a Copy-hold Manor be Lessee for Life, or for Years, Guardian, or any who had particular Interest; or Tenant at will of a Manor, accept a Surrender, and after, before Admittance, the Lessee for Life dyes, or the Years, Interest, or Custody or the Will is determined, although the next Lord comes in paramount the Lease for Life, or for years, the Custody, or the particular Interest or Tenancy at Will, yet he shall be compelled to make Admittance according to the Surrender, *17 Jac. Lord Arundel's Case, Co. Lit. 59. b. Trin. 1 Jac. Rot. 854. Shopland and Ridler.*

By the Deputies Servant admitting, no Judicial Act.

The Deputy of a Steward, commands H. his Servant to keep Court, and grant Land and Admit, *Per Cur.* it is good; for the taking a Surrender,

Surrender, granting Lands by Copy, admitting a Copy-holder, is not any judicial Act, for there need not be any Suitors there, who are Judges, 1 Leon. 288. Lord Dacres's Case.

What amounts to an Admittance.

If a Copy-holder in Fee surrender to the Use of another, and after at another Court he surrenders to whose Use the Surrender was, surrenders the Land to the Use of another; this shall enure as an Admittance upon the first Surrender, and after a Surrender; for by the acceptance of the Surrender, he is admitted Tenant, 1 Rolls Abr. 505. Calebin's Case, 3 Bulstr. 230. *Acceptance of a Surrender.*
cestuy que use

If a Copy-holder surrender to the Use of another, and after the Lord having knowledge of this, accepts the Rent of *cestuy que use* out of Court, this is an Admittance in Law, Rolls 1 Abr. 505. *Acceptance of Rent.*
Freswel and Welch.

If the two Tenants into whose Hands the Surrender was, pay the Rent to the Lord, yet his acceptance shall not amount to an Admittance; but if he had alledged the payment of the Rent, and acceptance of it by the Lord, as of his Copy-holder; this would have amounted to a good Admittance of him, 3 Bulstr. 215. *mesme Case.*

Any act to imply the consent of the Lord to the Surrender, it shall be a good Admittance; the Presentment by the Homage doth not make an Admittance; the acceptance by the Steward of the Presentment, is no Admittance, *Bridgman Rep. 82. Robinson and Groves.* *What acts or words by the Lord amount to an Admittance.*

Copy-holder surrenders his Estate to the Use of J. S. who again surrenders the same to the Use of J. N. this is good, *vide supra*; Or in

such case, if the Lord meet J. N. and saith to him, *Such a Surrender is made to your Use, to which I agree, or am content*; this saying amounts to a good Admittance, 3 Bulstr. 230. *Elken's Case* 215, 216.

If the Steward accept a Fine as of a Copyholder, it amounts to an Admittance; granted in *Rawlinson and Green's Case*, 3 Bulstr. 237.

In what Cases the Admittance of one shall be the Admittance of another.

If a Copyholder surrender to the Use of one for Life, the Remainder to another, the Admittance of Tenant for Life is Admittance for him in Remainder also, for that they are but one Estate; and but one Fine is due for both, 4 Rep. 22, 23. *Fisher's Case*. *Alister* of him in *Reversion*, *More*, n. 488. *Dell and Higden*.

He in Remainder after a Tenant for Life, who was admitted, surrenders to the Use of a Stranger in the Life-time of Tenant *pur vie*, and good; *Cro. Jac.* 31. *Auncelm's Case*: But such Admittance of Tenant for Life, shall not prejudice the Lord of his Fee due by the Custom, 4 Rep. *Brown's Case*, 22, 23. *Foxton and Colston*. But in *Hippin and Bunner's Case*, *Popbam* thought only one Fine to be due upon such surrender, which the Tenant for Life shall pay before his Admittance, except there be especial Custom that two Fines shall be due, *Cro. Eliz.* 504.

The Admittance of Tenant for Life, or Years, shall be an Admission of all in Remainder, *Per Hales*, and there is no inconvenience in it; for Fines are to be paid by the particular Remainder, except a Fine be assessed for the whole Estate, and then there is an end of the Business

*Admittance of
Tenant for Life is
Admittance for him in
Remainder*

*Per Hales in
Rawlinson.*

finess. The Estate is bound by the Surrender and shall go to them in Remainder, *Mod. Rep.* and 3 *Keb.* 29. *Blackburn* and *Greves*.

A Copy-holder Surrenders to the Use of several Persons for years, *successive*, the Remainder in Fee to *J. S.* an Admittance of a particular Tenant is an Admittance of all the Remainders to all purposes, but only the Lords Fine; and the Possession of Lessee for years is the Possession of him in Remainder, *ibid* so as to make a *Possessio Fratris*, and the Sister of the whole Blood shall have it before a Brother of the second Venter.

Admittance by Attorney.

The Lord may refuse to admit by Attorney him to whose Use a Surrender was made, for that he ought to do Fealty, which he cannot do by Attorney. 9 *Rep.* 76. *Comb's Case*. Yet if the Lord will admit him by Attorney, its good, *ibid*.

A Copy-holder surrendered to the Use of his last Will, and devised the Lands to his youngest Son, in Fee: The youngest Son being in Prison, makes a Letter of Attorney to one to be admitted to the Land in the Lords Court, in his room, and also after Admittance to surrender the same to the Use of *B.* and his Heirs, to whom he had sold it for the payment of his Debts; by two Judges, its not a good Surrender.

Admittance of an Heir is good by *Prochein Amy*, for by such Admittance he is to do corporal Service, which cannot be done but in person, and yet it hath been adjudged good, the Heir consenting; but otherwise 2 *Siderfons*

By *Prochein Amy*.

37, 61, *Blunt and Clark*, 4th Rep. *Brown and Clerk's* Case.

The Case was, Copy-holder surrenders to the Use of J. S. and his Heirs, Proviso, That if the Copy-holder pay eight hundred pounds, at such a day, the Surrender shall be void. J. S. dyes before the day, not being admitted, and his Heir beyond Sea. A Neighbour comes and is admitted in the name of the Heir, the Heir comes back and brings Ejectment, *Per Cur.* Its a good Admittance, for a Consent subsequent is as strong as an Authority precedent in this Case, and the Heir affirms his Admission. And if a Surrender (*Per Glyn*) be to the Use of J. S. and J. N. is admitted and J. S. consents, its a good Admittance.

Admittance, where to be made.

The Lord of the Manor may make Admittance out of the Manor also, *Co. Lit.* 61. b.

The Steward of the Manor may admit upon a Surrender out of Court, as well as in Court, 4 Rep. 26, 27. *Freswel and Welch*.

Admittances upon Descent.

The diversity between Admittance upon Surrender, and Admittance upon Descent lyes.

13. In Admittance upon Surrender, nothing is vested in the Grantee before Admittance, no more than in voluntary Grants, but in Admittance upon Descents the Heir is Tenant by Copy immediately upon the death of his Ancestor.

The time of Admittance.

There is thirty years between the death of the Father, and the Heirs not being admitted who made a Lease: *Per Cur.* this is *supina negligentia*, and shall disable his Person to make any Demise, but the Lessor at the time of the death of his Ancestor was two years of age, and that after his full age, no Court had been holden for a long time, and that at the first Court lately he prayed to be admitted, and the Steward refused him. And *Per Cur.* this is a good excuse, 1 Leon. 100. Rummy and Eves.

If a Copy-holder dyeth, his Heir within age, he is not bound to come at any Court, during his non-age, to pray Admission, or to tender his Fine; also if the death of the Ancestor is not Presented, nor Proclamations made, he is not at any mischief, although he be of full Age, *ibid.*

When the Heir must pray to be admitted.

What things the Heir may do or not before Admittance.

Upon the death of the Ancestor he may enter upon the Land before Admittance; he may take the Profits, punish any Trespasses done upon the Land, 4 Rep. 21. Brown's Case, and 23 Fitch and Huckly.

He may before Admittance surrender to whose Use he pleaseth, paying the Lord his Fine.

The Lord may avow upon him before Admittance, for arrears of Rents or other Services.

If Baron and Feme Copy-holders to them and to the Heirs of the Husband are, and the Husband dyes, the Heir of the Husband may surrender his Reversion into the hands of two Tenants of the Manor, out of Court, before any Admittance, during the Life of the Wife; and this is a good Surrender, for the Reversion was cast upon him before any Admittance, *Calchin's Case*, 1 *Rolls Abr.* 499.

Possessio Fratris before Admittance.

What makes a Possession or not for that purpose.

There shall be a *possessio fratris* before Admittance; for if a Copy-holder in Fee have Issue a Son and a Daughter by one Venter, and a Son by another Venter; and his Son by the first Venter enter into the Land and dyeth before Admittance, the Daughter shall Inherit as Heir to her Brother, and not the Son by the second Venter as Heir to his Father. And sometimes the Possession of a Termor, without any actual Entry or Claim made by the Heir, will make a *possessio fratris*; as if the Copy-holder by Licence of the Lord, maketh a Lease for years, and dyeth, and the Son of the first Venter dyeth before the expiration of the Term, being neither admitted, nor having made any actual Entry or Claim; yet this Possession of the Lessee is sufficient, and the Reversion shall descend to the Daughter of the first Venter, and not to the Son of the second Venter; but if the Lease had determined, the Son living by the first Venter, and afterwards he had dyed before any actual Entry made, the Law would have fallen out otherwise, because there was a time when he might have lawfully entred. The same Law was as to the possession of a Guardian.

Heir before Admittance, is not a compleat Tenant to all purposes.

But yet the Heir before Admittance, is not a compleat Tenant to all intents and purposes, for before that he cannot be sworn of the Homage,

mage, and he cannot maintain a *Pleint*, in the nature of an *Affise*, in the Lords Court, till he is admitted, *Co. Cop.*

As there may be *posseſſio fratris, &c.* before the Heirs Admittance, ſo there may be a Tenant by the Curteſie, (*Dyer, f. 292.*) before Admittance of the Feme, *More, p. 425.*

By *Hales*, in the Caſe of *Blackburn* and *Greaves*, *Modern Rep. 120.* If a Surrender be to the Uſe of *A.* for Life, the Remainder to his eldeſt Son, &c. or to the Uſe of *A.* and his Heirs, and then *A.* dyes, the Eſtate is in the Son, without Admittance, whether he takes by Purchase or Deſcent.

One ſeized of a Copy-hold Tenement in right of his Wife, in his Demefn, as of Fee; ſurrenders this Copy-hold Tenement without his Wife, to the Uſe of a Stranger in Fee, who was admitted by the Lord accordingly; Husband dyes, and Wife dyes, the Heir of the Wife without Admittance enters on the Stranger, and made a Leaſe, and good, *Popham 39. Bullock and Dibler*: This is no ſuch diſcontinuance againſt the Heir, as to put the Heir to a Plaint in the nature of a *cui in vita*; its no more than a Grant which paſſeth no more than his own Eſtate, and the Heir may intermeddle with the Poſſeſſion before Admittance.

Upon a Cuſtom to ſurrender to two Copy-holders out of Court, a Surrender to the Heir of a Copy-holder before Admittance, is good, *1 Keb. 25. Munifas and Baker.*

Copy-holder dyes, the Lord admits a Stranger, the Heir may enter, and upon re-entry, maintain a Treſpaſs without Admittance, *Noy, p. 172. Simpson and Gillion.*

Surrender to the Heir (as a Copy-hold Tenant) is good before Admittance. Heir may enter and have Treſpaſs before Admittance.

He shall have Trespass, and this before his Admittance upon Descent, 2 H. 4. 12. Pl. 49. 4 Rep. 23. b. Cro. El. 349. Berry and Green.

When the Heir shall be in by Purchase and not by descent.

If a Copy-holder of Inheritance surrender this to the Use of another, and his Heirs, and he to whom the Surrender is made, dyes before Admittance, and after the Lord admits his Heir, he shall be in by Purchase, and not by Descent, for he is in by the Lord, for nothing was in his Father by the Surrender before Admittance, 1. Rolls Abr. 827. More's Case.

Where there needs no Admittance.

R. G. Vasey's Case: 146 supra.

When one comes in as of an old Estate,

In the Cases of the Heir per Descent, Vide

A. surrenders Copy-hold into the hands of the Lord, and the Lord *de novo* re-grants the same to A. for Life, and afterwards to J. his Wife, during the non-age of the Son and Heir of A. and after to the Son and Heir in Tayl. A. dyes, the Child being 5 years old: Now the Wife is to have the said Lands for 16 years, by force of the said Surrender and Admittance. The Wife took another Husband and dyed. *Per Cur.* The Husband shall have the Land during the non-age of the Infant, and that without any Admittance, for that he is not in of any new Estate, but in the Estate of his Wife, as Assignee, 3 Leon. p. 9. Dedicot's Case.

Executors.

If a Copy-holder be for years, and maketh his Executors, and dyeth, the Executors shall have the Term without any Admittance, *Sed Quere*, for *Weston* in this point was against *Dyer* and *Brown*.

Joynt-Tenants Release.

One Joynt-Copy-holder released to his Companion, and it was resolved, That the Release was good without Surrender or Admittance, for

for the first Admittance is of them, and every of them, and the ability to Release was from the first Conveyance and Admittance, *Winch*, p. 3. *Wase and Pretty*.

In what Cases and to what purposes the Copy-hold, Estate shall be in the Tenant before Admittance, and to what purposes not, and what Leases made by them shall be good.

Upon Surrender nothing is vested in the Grantee before Admittance. *Vide supra*.

The Copy-holder upon Surrender (if the Lord refuse to admit him,) cannot enter without Admittance, nor have an Action, unless there be a special Custom to warrant it; for he who makes the Surrender continues in possession till Admittance, and not the Lord, or *Cestuy que use*, and he shall have Trespass against any that enters, *Cro. El. 349. Berry and Green*.

If by the Custom of the Manor, the Copyhold ought to descend to the youngest Son, and the Copy-holder in Fee surrender this to the Use of himself and his Heirs, and dyes, before any Admittance upon the Surrender, and the youngest Son first enters, the eldest may not justify his entrance upon him before Admittance, *1 Rolls Abr. 502*.

He who makes the Surrender continues in possession till Admittance.

If a Copy-holder surrendreth to the Use of one for Life, who is admitted and dyeth; he in the Reversion may enter without a new Admittance; and therefore *H. B.* being seized of Copy-hold Land in Fee, and having Issue three Sons, *G. H.* and *J.* he surrenders it to the Use of his last Will, and thereby devised it to his Wife for Life, the Remainder to *H.* and the Heirs of his Body; the Wife dyed after Admittance, *Henry* dyes without Issue. *G.* may

He in Reversion.

may enter, and Admittance for him is not necessary, 1 Leon. p. 174. Bullen and Grant.

If customary Lands do descend to the youngest Son by Custom, and he enters, and leaseeth to another, who takes the Profits, and after is Ejected; He shall have an *Ejectione Firmæ*, without any Admittance of his Lessor or Presentment that he is Heir, 1 Leon. p. 100. Rummy and Eves.

Feme to her Free-Bench, the Freehold of the Copyhold being granted over.

Admittance in Law.

The Custom of Free Bench, was, *durante viduitate si tam diu casta vixerit*, the Wife after the death of her Husband comes into Court, and challenged her Right of Free Bench, and prayed to be admitted, and the Steward refused, and she made a Lease for one year to the Plaintiff, and if he might bring an Action by reason the Woman was not admitted, was the Question, (for it was agreed no Fine was due to the Lord.) *Per Cur.* If the Freehold of the Copyhold be granted over, and the Husband dyes, there cannot be Admittance in that Case, and yet she may enter: And in this case she hath done all she could for Admittance; and it is an Admittance in Law, to an Estate created by Custom, and by act of God and Law. Continual Claim amounts to an Entry, *Hutton*, p. 18. *Jordan and Stone*. In this Case after the death of the Husband, the Law casts the Estate upon the Wife before Admittance, and she may make a Lease for years, as any other Copyholder may, *mesme Case*, 1 *Rolls Abr.* 592.

Steward will not admit *Cesly que use*. He enters and takes the Profits; Lord brings Ejectionment; the Defendant shall plead not Guilty.

If a Copyholder Surrender to a Stranger, and the Steward will not admit him, and the Stranger enters and occupies the Land, if the Lord Lease to a Stranger to try the Title, he to whom the Surrender was made (although he be not admitted) may well plead not Guilty, and it shall be found for him against the

the Lord. In the Case of *Arnold and George, Yelv. p. 16.* agreed by the four Judges: Yet *Quere*, for how can the Stranger make a Title to the Profits without Admittance? But perhaps the reason was, That the Lord seemed to be *particeps criminis*, for it may be intended he would not suffer the Steward to admit the Defendant.

She who hath a Widows Estate, shall make a Lease before Admittance, for the Law vested the Estate in her, and there is no Fine due to the Lord, *Noy, p. . Remington and Cole.*

Husband enters into the Lands in right of the Wife, before Admittance, and the Wife dyes before Admittance, yet his Lease shall be good, 1 *Anderson 192. Ewer and Astwick, in More, n. 425. mesme Case.* If by the Entry of the Husband without Admittance of the Wife, he should be Tenant by the Curtesie, and resolved he shall.

Entry of the Husband in Right of the Wife, and Lease by him before Admittance.

In what Cases the Lord shall be compelled to make Admittances, and how, and in what not.

If the Lord of the Manor for the time being, be Lessee for Life, or Years, Guardian, or any that hath any particular Interest, or Tenant at Will of a Manor (all which are accounted in Law *Domini pro tempore*) do take a Surrender into his hands, and before Admittance the Lessee for Life dieth, or the Years, Interest or Custody do end or determine, or the Will is determined, though the Lord cometh in above the Lease for Life or years, or other the particular Tenancies, yet shall he be compelled to make Admittances according to the Surrender, *Co. Lit. 59. b. Earl of Arundel's Case.*

Action on Case
by the Surren-
deror, but not
by *cestui que*
use.

It was resolved in *Galloway's Case*, 26 El. The Party that made the Surrender may have Action on the Case against the Lord, for not holding his Court, and admitting him to whose Use the Surrender was made, but *Cestui que use* cannot.

Chancery.

Chancery will compel the Lord to admit a Tenant, *Totbil*, p. 65.

He that hath
no Interest (as
a Nominee)
shall have no
Action *sur Case*.

Custom was, That a Copy-holder for Life should name his Successor for Life, and to compound with the Lord; if he cannot compound, then the Homage to assess the Fine; he tenders it, the Lord refuseth to admit, Action on the Case lies not against the Lord, and he that is nominated hath not any Interest therein, but he may compel him in Chancery, *Cro. Jac.* 368. *Ford* and *Hoskins*, 1 *Rolls Rep.* 125, 195. *ibid.* 2 *Bulstr.* 236. *mesme Case*. The Nominee hath neither *jus in re*, nor *jus ad rem*, he hath a nomination only, which is matter meerly in Equity; he hath neither *damnum*, nor *injuria* here, because he hath no Interest.

Littera Attornatu ad sursum reddend. tenementa Custumaria sursum redditio & admissio, Co. Ent. 576.

C A P. XVIII.

Of Fines. Fines certain. Uncertain. Upon Descent and Purchase. Of Fine Excessive. What Customs are good as to payment of Fines. Of Fines as to Admittances to Reversions or Remainders. What refusal to pay a Fine shall be a Forfeiture or not. How the Lord shall recover his Fine.

Fines.

Fines due to the Lord upon Admittance are not to be paid till Admittance, either upon a Surrender or Descent; for Admittance is the cause of the Fine, and the Parties being Admitted, intitles the Lord to the Fine, *4 Rep. 28. Sand's Case and Bacon's Case*. Though sometimes they are certain, and by some Customs uncertain, yet they ought to be reasonable.

Of Fines certain.

It was the Opinion of *Richardson* Chief Justice, There is scarce a Copy-holder in *England* but the Fines are uncertain; for (saith he) If the Rolls make it appear that at any time a greater and lesser sum was paid for a Fine, this makes the Fine uncertain; the ordinary course to search it is by Bill in *Chancery*, *Lit. Rep. 252.* It was but his private Opinion, for Fines are certain in great numbers of Manors: And I suppose he means as to Evidence; for in the Case of *Allen and Abraham*, *2 Bulst. 32.* there is diversity between proof in case of Descents and

Evidence to
prove uncer-
tainty of
Fines.

Fines upon
Descent and
Purchase.

and Purchase: The Case was this. Upon not Guilty in Ejectment, the matter upon the issue was about the Custom of a Copy-hold Manor, whether the Copy-holders upon their Admittances have used to pay Fines uncertain at the will of the Lord, or certain, *i. e.* the value of two years Rent? To prove the Fines uncertain, the Plaintiff shewed divers Court Rolls of Admittances upon Surrenders, and that the Fines taken by the Lord were not certain, but sometimes one, sometimes another: *Per Curiam*, To prove a Custom for uncertainty of Fines, and not to be certain two years Rent, there ought to be shewed Court Rolls, and that in Cases of Descents; and that upon such Admittances, they used to pay two years Rent, the proof ought to be in case of Descents; for in case of a Surrender or Purchase, the Lord may take what Fine he will: But such Fines are no proof to prove the taking uncertain Fines by the Custom, but the same ought to be in cases of Descents.

Of Fines reasonable.

Excessive
Fines how to
be determi-
ned.

But where the Fines are uncertain, yet the Lord cannot exact excessive Fines; and if the Copy-holder deny to pay it, it shall be determined by the Opinion of the Judges before whom the matter depends, *Hubbard and Hamon's Case*, cited 1 *Brownl.* 186. 4. *Rep.* 27. *mesme Case*, *Co. Lit.* 59, 60. To this purpose is *Denny and Lemon's Case*, *Hobart*, p. 135.

Copy-holder brought Trespass against his Lord. Defendant pleads he had admitted the Copy-holder, and had assessed a Fine of twenty Nobles, and had appointed him to pay it to his Bayliff, at his House within the Manor three

three Months after, and alledged he had not paid it. The Plaintiff demurs, for that the Lord had not averred the Fine was reasonable. But *Per Cur.* the Lord is not bound to aver it, but it must come on the Copy-holders side, to shew the circumstances of the Case, to make it appear to the Court to be unreasonable, and so to put it upon the Judgment of the Court; for the Fine in Law is arbitrary, and is due to the Lord of common Right, and it is only in point of excuse to the Tenant, if it be unreasonable, and the Court shall judge the unreasonableness of it. The Copy-holder if he be Defendant, may plead not Guilty, and then it shall come in Evidence whether the Fine were reasonable or not; and so is the Opinion of my Lord Coke, *Comment upon Lit. Sect. 74.* The reasonableness (saith he) shall be discussed by the Justices upon the true circumstances of the case appearing unto them, and if the Court where the Cause dependeth, adjudgeth the Fine exacted unreasonable, then is not the Copy-holder compellable to pay it, for all excessiveness is abhorred in the Law.

It was argued in *Wheeler and Honor's Case*, That all Fines are reasonable, unless the contrary appear, 1 *Keb.* 154.

What Customs are good as to payment of Fines.

Of Fines due by the Copy-holder to the Lord, some be by change or alteration of the Lord, and some by change or alteration of the Tenant.

If the Fine be due by the alteration of the Lord, such alteration must be by act of God; the alteration for if the Lord do alledge a Custom within of the Lord,

M his

By the act of
God.

Due by the
alteration of
the Tenant.

The Fine by
whom to be
assessed,

Custom not
to pay a
Fine till full
Age.

his Manor, to have a Fine of every one of his Copy-holders, at the alteration or change of the Lord of the Manor, be it by alienation, demise, death, or otherwise, this Custom is against the Law, as to the change of the Lord by the act of the Party, for by that means the Copy-holders should be oppressed, by the multitudes of Fines by the Lords own act, but when the change groweth by the act of God, there the Custom is good, as by the death of the Lord, *Co. Lit. 59. b.*

But it is a good Custom that the Copy-holder had used to pay a Fine upon every alteration of the Tenant, either by the act of God, or by the act of the Party, *Co. Lit. 59. b. Armstrong's Case.*

The Fine is to be assessed by the Lord.

But in some places the Custom is, That the succeeding Copy-holder shall compound with the Lord for his Fine, and if he cannot compound, then the Homage of the Manor shall assess the Fine, as was the Case of *Ford* and *Hoskins*, *Cro. Jac. 368.*

The Custom is not to pay a Fine till one come to Age; its a good Custom, *3 Keb. 90.* agreed to in *Champion* and *Atkinson's Case.*

Fines as to Admittances to Reversions or Remainders.

Copy-holder in Fee surrenders to the Use of another for Life; when Lessee dyes he shall not pay a Fine for his Admittance to the Reversion, for this continues always in him, *2 Rep. 107. Margaret Podger's Case.*

If Copy-holder in Fee surrender to the Use of one for Life; the Remainder to another for Life, the Remainder to another in Fee, there

is

is but one Fine due; for the particular Estate and the Remainders are but one Estate, 1 *Rolls Abr.* 505.

What refusal to pay a Fine shall be a Forfeiture or not.

If the Fine be uncertain, notice must be given before there be a Forfeiture; *aliter*, if the Fine be certain; but yet *Denny and Lemon's Case* is good Law: Time and place must be ascertained, and refusal must be proved, 1 *Keb.* 154. 4 *Rep.* 27, 28.

Notice to be given if the Fines be uncertain.

The Lord assesseth a Fine of 12*l.* to be paid by a Copy-holder, and appoints it to be paid at his Capital Messuage of the Manor, three Months after, and the Copy-holder pretending the Fine to be certain, *viz.* two years Quit-Rent, offered at the day of assessing the Fine, according to the Rent for two years, but at the day appointed for the payment thereof, cometh not thither to excuse his non-payment, nor makes any other refusal. *Per Cur.* this is in Law a forfeiture of his Copy-hold; but if he had come at the day assigned him for the payment, and had then tendred the two years Quit-Rent, being the Fine certain, (though not the Fine assessed,) it had been no forfeiture, *Cro. Jac. p.* 617. *Gardner and Norman.**

Tendring the Fine certain though not the Fine assessed is no forfeiture.

It is adjudged in the Case of *Dalton and Hammond, More, n.* 851. If the Fine be certain, the Tenant is to bring it with him to the Court, and pay it before Admittance; and if he be not ready to pay it, its a Forfeiture; *aliter* of the refusal to pay an excessive Fine.

Where a Copy-holder hath divers several Lands, severally holden by several Services by Copy, there the Lord may assess and demand

For every several Tenure, several Fines.

Fines severally, for every parcel which is so severally held; for the Tenant may refuse to pay a Fine for the one, and so forfeit this, and yet pay the Fines for the others; and for every several Tenure the Lord ought to demand and assess a several Fine, as in *Tavernor and Cromwell's Case*, 4 Rep. 28. *Hobart and Hamond's Case*.

How the Lord recover his Fine.

Debt.

Debt lyes for a Fine against the Copy-holder by the Lord, *Siderfin*, p. 58. agreed in the Case of *Wheeler and Honor*.

Copy-holder,
Heir waves the
possession.

If Copy-holder in Fee dyes where the Fine is certain, and the Heir waves the possession and refuseth to be admitted, it seems the Lord shall not have an Action of Debt against him; and yet some hold he may not wave the possession, because being Inheritance, Interest descends, and for this reason *præcipe quod reddat* lyes against the Heir at Common Law before his Entry, *Siderfin*, p. 58. *Wheeler and Honor*.

Pled. Vide Presidents, infra.

Costume quod Dominus habeat rationabilem finem pro admissione, Co. Ent. 646. 13 Rep. 1.

C A P. XIX.

Of the Entayling of Copy-hold Estates. The different Opinion of the Judges, with an Abstract of the Reasons and Arguments how Copy-holds are or may be Entayled, and the Law settled as to that Point. How such Copy-hold Entayls may be barred or dock'd. And what acts of Tenant Copy-holder in Tayl, &c. shall amount to a Discontinuance or not.

Of Copy-hold Estates being Entayled.

AS to Copy-hold Lands being Entayled, whether there be any such Estate Tayl by any particular Custom to be allowed, and how such Entayls arose, it hath been *vexatio questio*. This Question hath been curiously debated in our Books, and therefore I shall be the larger upon it.

It is clear, That the Statute *de donis per se* doth not create an Estate Tayl in a Copyhold, 9 Rep. 105. the Case of *Thornton and Lucas*, there cited; for the Statute *de donis* doth not extend to such base Estates at will.

The Question is, if the Statute may co-operate with the Custom as to make an Estate Tayl. *Coke* in the Case of *Warn and Sawyer*, 1 *Rolls Rep.* 48. cited one *Haslerick* and *Grays* Case to be so adjudged; and in one *Hills* Case a Custom was pleaded that a Copy-hold might be granted to one and the Heirs of his Body, with remainder over; but (saith he) we of the other side durst not hazard the matter

upon this, but we devised a Plea, That there was another Custom there, that if a Tenant in Tayl alien, this shall be a bar to the Remainder; and upon issue that Custom was found; for it was agreed, *Per totam Curiam*, That if an Estate Tayl may be of a Copy-hold by Custom, that by a Custom it may be dock'd and destroyed.

Copy-hold
cannot be En-
tayled within
the Statute
de donis.

It hath been often moved in our Books, When a Copy-holder in Fee surrenders to the Use of one in Tayl, there being no Custom to warrant such an Entayl, whether it be an Estate Tayl, by the Statute of *De donis conditionalibus*; or a Fee-simple conditional at the Common Law. This point is well argued and settled in *Rowden* and *Malster's Case*, *Cro. Car. p. 42*. *Telverton* held, That it was an Estate Tayl by the Equity and intent of the Statute *de donis*, but *Hutton*, *Harvy* and *Croke*, That it was not an Entayl, but a Fee-simple conditional at Common Law. 1. Because it would be prejudicial to Lords, for by this means the tenure would be altered, for the Donee in Tayl without a special reservation, ought to hold of the Donor, by the same Services that the Donor holdeth over, and he who comes in by Surrender and the Admittance of the Lord, to hold to him and the Heirs of his Body, cannot hold of him who surrendred, but shall hold of the Lord, and is Tenant at will unto him, and shall do the Services unto him as Lord. 2. In respect of the baseness of their Estate, the Statute never intended to provide remedy for them nor their Alienations; for the words of the Statute are, *Quod voluntas donatoris in Charta sua manifeste expressa de cetero observetur*, which proveth that the intent of the makers of the Statute was, That no Hereditament

ment should be intayled within this Statute, but such as either was or might be given by Charter or Deed, and other Reasons out of the words of the Statute, *Carters Rep.* 8. But Copy-holds are no such Hereditaments, and therefore not within the meaning of the Act.

3. If Copy-holds might be Entayled, then the perpetuity of such Estates might be maintained, for a Fine cannot be levied of Copy-hold Lands to bar the Entayl, nor can a Recovery in value be intended of such an Estate where warranty cannot be annexed to it. *Ceo reason come jeo pense ne vault rien pas. Car est agree per tous que poet estre dock't per recovery en curia del Baron, Vide apres.* They held also, That neither Estate Tayl, nor Estate after possibility of issue extinct (which had a necessary dependance upon an Estate Tayl) can by any particular Custom be allowed. *Carve Lecteur*; for its agreed by all, That a Custom co-operating with the Statute may create an Estate Tayl. Observe *Plowden in Manxel's Case* is no Law, 2 *Rolls Rep.* 383. *mesme Case*

Co. Lit. 60. As there may be an Estate Tayl by Custom with the co-operation of the Statute of *W. 2. Cap. 1.* So may he have a *Formedon in descender*, i. e. a Writing in the nature of a *Formedon in Descender*, in the Lords Court: But as the Statute without a Custom extendeth not to Copy-holds, so a Custom without the Statute cannot create an Estate Tayl. Now it is not a sufficient proof, that Lands have been granted in Tayl; for albeit Lands have anciently and usually been granted by Copy to many men and to the Heirs of their Bodies, that may be a Fee-simple conditional, as it was at the Common Law; but if a Remainder hath been limited over such Estates and

enjoyed, or if the Issues in Tayl have avoided the alienation of the Ancestor, or if they have recovered the same in Writs of *Formedon* in the Discender; these, and such like, are proofs of an Estate Tayl: But if by Custom Copy-hold may be Entayled, the same by like Custom may be cut off, *Plow. Com.* 240.

This was the first Opinion, and by *Clench* and *Gaudy* agreed to in *Gravenor's Case*, *Popham* 32. The other Opinion is, That an Estate is wrought out by the Equity of the Statute *de donis*, for otherwise it cannot be that there should be any Estate Tayl of Copy-hold Land; for by Usage it cannot be maintained, because that no Estate Tayl was known in Law before this Statute; and after this Statute it cannot be by Usage, because this is within the time of limitation, after which an Usage cannot make a Prescription, for a Custom cannot be made after the Statute *de donis*. And it appeareth by *Littleton* and *Brook*, That a Plaintiff lyes of Copy-hold Land, in the nature of a *Formedon* in Discender at Common Law, and therefore the Statute helps them for their remedy for Entayled Lands, which is but customary by Equity; and if the Action shall be given by Equity for this Land, why shall not the Statute by Equity work to make it an Estate Tayl also of this nature of the Land? *Popham's Rep.* 33. *Gravenor* and *Brooks*; so *Bullen* and *Grant's Case*.

A Copy-holder Surrendered to the Use of J. for Life, the Remainder to H. and the Heirs of his Body: it was a Question if this Estate limited to H. was an Estate Tayl, or a Fee-simple conditional; for if it were a Fee-simple conditional, then there cannot be an other Estate over, (but yet in Case of a De-
vise,

vise, an Estate may depend upon a Fee-simple precedent, but not as a Will, but as an executory Devise.) *Per Wray*, it is an Estate Tayl. *Coke* then said, They who would prove the Custom to Entayl Copy-hold Lands within a Manor, it is not sufficient to shew Copies of Grants to persons and the Heirs of their Bodies, but they ought to shew that Surrenders made by such persons have been avoided by such matter. But by *Wray*, that is not so, for customary Lands may be granted in Tayl, and yet no Surrenders have been made within time of memory, 1 *Leon.* p. 174. *Bullen and Grant, Cro. El.* 148. *mesme Case.* *Heyden's Case* in 3 *Rep.* 8. is clear, That neither Statute without the Custom, nor the Custom without the Statute, but both co-operating may create Tayl. And as for Custom, if the Custom be to grant Lands in Fee-simple, this without question may be granted to one and the Heirs of his Body by Copy, for *omne majus includit minus.*

My Lord Chief Justice *Bridgman* seems to argue this point very accutely and succinctly in *Carters Rep.* 22. *Taylor and Shaws Case.* First (says he) a Copy-hold may be Entayled; not Entayled, as within the Statute of *W. 2.* nor by vertue of any Construction of the Statute *W. 2.* but there may be such an Estate before *W. 2.* of a Copy-hold, which is a kind of base Estate, and which might be grantable to one and the Heirs of his Body, according to the Custom, and if he dyed without Issue, it might be aliened again; and that a Copy-holder could not bar his Issue, unless by a Recovery; such an Estate might be by Custom. I hold (saith he) That the Evidence may fall out to be such that we may take it for granted, that Lands granted by Copy to one and the Heirs of his Body

Body, the Remainder over may be a good Remainder, and the Reversion may continue in the Copyholder, the Donor may have a good Reversion, and all this without the help of *W. 2.* That which confirms me is the constant practice of most Copyholds, to have Estates over. As for the reason of it, if we shall give in Evidence (for the purpose) a Surrender in *H. 7th* time, wherein Lands are limited to one and the Heirs of his Body, the Remainder over; this is an Evidence that it was so in *H. 7th* time, and we have reason to think so it was past time of memory of Man. And as your Evidence is for Custom, so may your Case be to make an immemorial Custom. Then all the Question is, whether it will bear it or not? In this Case of a Copyhold being an Estate at will, you may have it at will, according to the nature of the Custom; it is not against the Analogy and Reason of the Law, and it may bear it; the Evidence may be such. If in *H. 7th* or *E. the 4th* time it appears so, it is a good warrant for matter of Evidence for a Jury to find, That there were such Copyhold Estates with limitation over. Now before the Statute of *W. 2.* it had been a good Custom to grant Copyhold to one and the Heirs of his Body, the Remainder over; or to grant the Land by the name of a Reversion; for here is no alteration of Common Law Estates: The reasonableness of this Custom appears by the Statute of *W. 2.* That Act doth not create the Estate, neither a Remainder nor a Reversion; but the Act prohibiting Alienations, *Quo minus ad exitum illorum, quibus tenementum sic fuerit datum remaneat post obitum illorum vel ad donatorem (si exitus ejus deficiat) revertatur*, by operation of Law, it comes to a Remainder or Reversion;

Proofs of an
Estate Tayl.

Reversion; if by Custom such Estates may remain or revert, so may Copy-holds by Custom, because they are Tenants at will. Now as by that construction *W. 2.* did make a Remainder or a Reversion, so the Custom of prohibiting Alienations by Copy, may make Reversions or Remainders of Copy-hold Estates.

If the Reader hath a mind to see other Cases about the Entayling of Copy-holds (though they are all reduced to what is before cited) he may peruse *2 Brownl. 42, 76. Keymer and Poel 121. Hill and Upchurch, 1 Rolls Rep. 48. Warn and Sawyer. Cro. El. 717. Erisb and Rives, &c. 2 Brownl. 121.*

The Law about Entayling of Copy-holds is settled and agreed by the Judges, *B. R. 17 Car. 2. Newton and Shaftoe's Case*, That it is by Custom and not by the Statute, so agreed *M. 18. Car. Pilkington and Stanbop's Case, quæux vide apres.*

Of docking or barring Copy-hold Estates, being barred by Fine or Recovery, or otherwise.

It is agreed by all the Judges, *1 Rolls Rep. 48. Warn and Sawyer's Case*, That if an Estate Tayl may be of a Copy-hold by Custom, that by Custom it may be dock'd and destroyed, See *More, n. 877.* A Copy-hold may be Entayled by Custom, and barred by a Recovery by special Custom; and it was agreed that a Surrender may bar the Issue by special Custom, *Chard and Wyat, fo Lee and Brown, M. 15 Jac. B. R.* And it was agreed to be a strong proof of the Custom, that they to whose Use such Surrenders had been made, had enjoyed the Land against the Issue in Tayl, *1 Rolls Abr. 506. mesme Case.*

The

*Customs of W**Wakefield*

The Custom of the Manor of *Wakefield* was, That they may Entayl their Copy-hold Lands; and the Custom of the Manor to bar the Entayls, and the Remainders there, is, That the Tenant in Tayl shall commit a Forfeiture, as by making a Lease without Licenc, &c. and then for the Lord to make three Proclamations and to seize the Copyhold, and then to grant this to the Copy-holder and his Heirs, allowed to be a good Custom; Also this Custom there was good, That if Tenant in Tayl make a Surrender to a Purchaser and his Heirs, of his Copy-hold, and such Purchaser intending to bar the Entayl and the Remainders, commits a Forfeiture, upon which there is a seizure by the Lord, and three Proclamations, &c. and so for him to grant; these were adjudged good Customs, though the Tenant in Tayl nor his Issue are privy: See as to this last Custom in a Tryal at Bar in Ejectment, *Siderfin*, p. 314. Lessee of *Pilkington* contra *Stanbop*. So in Ejectment in *Grantbarn* and *Coplies* Case, 2 *Sanders* 422. And it was farther adjudged, If such Forfeiture be presented in the Copy-hold Court, and the Land seized in *Manus Domini*, the Lord may not admit any other but him to whom it is limited and assigned by the Tenant who made such Forfeiture, and the Lord cannot dispose of it otherwise: And farther, That if the Lord admit any other, and after sells the Manor to a Stranger, by whom *Cestuy que use* is admitted, *Cestuy que use* hath a good Title, and shall avoid all mean acts and dispositions made by the Lord, as he should if a Surrender had been made to his Use, *ibid*.

Mr. Keble in the Reporting of this Case of *Coply's* 2. 823. saith, A Surrender is to the Lord to the intent *quod inde faciat voluntatem*, yet by

by Custom the Surrenderer by Petition or Declaration may direct it to any person whatever, and the Lord must pursue it, and there is no Estate in the Lord, but it remains in the Tenants hands till Admittance of such party, and the Purchafor might come in at any time.

The Case of *Taylor and Shaw*, in *Carters Rep.* 6, 22. The like Custom is adjudged void, but that was upon a fault in the special Verdict: Tenant in Tayl of Copy-hold Lands, the Jury find a Custom, That this is to be barred by seizure of the Lord as a Forfeiture, & *non alio modo*, and not otherwise, as the Lord Chief Justice *Bridgman* well observed, and that being naught, the whole Custom is in vain. As for his first Reason of such a Custom being void, that its a precarious Custom; you must have the concurrence of the Lord, or you cannot do it; and Custom implies Right; though this is of weight, yet it might have been objected in *Pilkinton's Case* and *Grantham's Case*, yet in these Cases such Custom is adjudged good. But his second Reason is cogent; by this negative Custom you destroy that which is essential to the Estate. If you will allow a customary Tayl, you must allow a customary Recovery, and so this Case differs from those others.

Now these ways of barring Entayled Copy-holds, are in nature of a Recovery to dock the Entayl. But *Rolls* Opin in *Stiles* 450. *Pilkington* and *Bagshaws Case* is not Law; he conceived there could be no such Custom to cut off Entayled Lands of Copy-hold by the Forfeiture and seizure of the Lord, for his seizure upon the forfeiture destroys the Copy-hold Estate at Common Law; *Modus*

us & Conventio vincunt Legem. And therefore

The manner
how, and the
reason why a
Recovery shall
bar a Copy-
hold Estate.

It was made a Question in *Dell* and *Heydon's* Case, If Tenant in Tayl of a Copy-hold, Remainder in Fee, is impleaded by plaint in a Court Baron, in nature of a Writ of Entry in the Post, and suffers a Common Recovery with Voucher, whether if Tenant in Tayl dye *sans* issue, this shall bind the Remainder? *Cro. El. p. 372.* But *Rolls* in 1 *Abr. 506.* in the same Case, saith this may be barred by a Common Recovery, for a warranty may be annexed upon this by a Surrender to an Use, or by a confirmation, or by Release with Warranty, and it may be intended he shall have other Copy-hold in value. And Sir *Francis More* in the Report of this Case saith, if Tenant in Tayl come in as Vouchee, this is a bar to the Issues and Remainder. Surrender with warranty to an Use, and grant accordingly, makes the party in the *per* by the Surrenderor, and upon this Warranty the Surrenderor may be vouched, and Recovery in value shall be only of other Copy-hold Lands in the Manor, No. 488. and in 4 *Rep. mesme* Case, its adjudged that such Recovery shall make a Discontinuance, and shall take away the Entry of the Heir in Tayl.

If a Copy-holder surrenders in Tayl, and the Heir of the Donee is to bring a *Formedon*, he ought to count of a Gift made by the Copy-holder who surrendred, and not by the Lord, for he is but the Instrument to convey it, and nothing passeth from him, *Cro. El. 361. Paulter* and *Cornbil.*

And yet in the Case of *Clun* and *Pease*, adjudged since *Dell* and *Higden's* Case, *Per totam Curiam*, A Recovery with common Voucher
in

in a Plaint, in nature of a Writ of Entry, in *Curia Manerij*, shall not bind the Issue in Tayl, for it shall not bind but upon expectancy of a Recovery in value, which is the reason it binds for Land at the Common Law, and here he cannot have any Land in value, neither at Common Law, nor customary Land; for if it should be so Conveyed, the Lord should lose his Fine, and one should hold his Land as a Copy-holder without Admittance or Grant from the Lord, which is contrary to the nature of a Copyhold, but its a Discontinuance clearly, which cannot be defeated by Entry, *Cro. El. p. 391.*

Now as a Feoffment will not destroy a Copyhold Estate Entayled, so neither a Fine or Recovery at Common Law.

It doth not make any Discontinuance, for these being Common Law Assurances, they do not work upon the Assurance of the Copyhold, and that that doth not work upon the right of the Estate Tayl cannot make a Discontinuance. And the same reason of a Fine, which is but a Feoffment on Record, and the same reason holds; a Fine may work to the destruction of an Estate, where it is not preserved by special Custom, but this is preserved by special Custom: so for a Recovery, that that is in demand is the Freehold. True, if the Recovery were in the Lords Court, there the Estate may be turned to a Right, and a Recovery at Common Law cannot bar a Copyhold Estate, because of the Recovery in value, to which the Warranty is annexed, doth not go according to the Copyhold, but according to the Freehold. These being Common Law Assurances, work only a Common Law Interest, and cannot work upon a Copyhold; this is the Abstract of *Glin's* Argument in *Taylor* and *Shaw's* Case, *Carter's Rep.*

Copy-hold
Estate, how
discontinued
or not.

But

How Copy-
hold barred
by a Fine at
Common Law.

Difference, as
to what may
pass by a Fine
or be barred
by a Fine.

But the Lord Chief Justice *Bridgman* in that Case put a nice difference, as to the barring Entayled Copy, by a Fine at Common Law; if a Copy-hold be suspended, while it is in suspense a Fine at Common Law bars it; for one cannot be a Copy-holder in Tayl and have the Inheritance of Freehold in himself, it must be suspended for a time, as if he divide the Copy-hold from the Freehold for a time; and he there gave a notable difference, where a man may pass a thing by a Fine, and where he may bar by a Fine; a right of Copy-hold cannot be passed by a Fine, but may be barred by a Fine. A man that hath a Rent-charge, he levies a Fine of the Land, the Rent-charge is gone by it, yet the Fine is not levied of the Rent but of the Land; as for his other Reason from the words of the Statute, 32 H. 8, *Of Lands any ways Entayled*, &c. I conceive that cannot extend to Copy-hold Lands, *Carter's Rep.* 25, 26.

Where by the Custom Plaints have been made in the Court of the Manor, in the nature of real Actions, if such a Recovery be against Tenant in Tayl Copy-holder, this shall be a Discontinuance, and shall take away the Entry of the Heir in Tayl, for they are warranted by Custom, and it is an incident that the Law amounteth to the said Custom, that such Recovery shall make a Discontinuance, 4 *Rep.* 23. *Deal and Rigden.*

Discontinu-
ance

If a man seized of Copy-hold Land in right of his Wife, surrender it to the Use of another in Fee, who is admitted, and the Husband dyes, this is not any Discontinuance to the Wife, nor to her Heirs, but that she may enter, and shall not be put to a *cui in vita*, nor her Heir to a *sur cui in vita*, 4 *Rep.* 23. *Bullock* and

and Dibler. Yet *Walmsly* in *Collins* and *Crank's* Case, *Cro. Jac.* 105. held it was a Discontinuance. Quære his Reason.

Surrender by Tenant Copy-holder in Tayl, makes not any Discontinuance, except a special Custom be, and then its a bar, *Vide prius*, and *Cro. El.* p. 148. *Bulle's* Case. But in *Cro. El.* 717. *Eriſhes* Case, That such a Surrender is a Discontinuance to put the Issue to his Action, this being as strong as a Livery by Tenant in Tayl, and the Alienee is in by the Tenant in Tayl, though he comes in by Grant of the Lord, 1 *Leon.* p. 95. Case 124. *Knight* and *Footman*, there holden, That the surrender of Copy-holder in Tayl to the Use of another in Fee, doth not make any Discontinuance, but the Issue in Tayl may enter, and the Serjeants Case there cited to be so.

One under age surrenders and dyes, having Issue *A. A.* may enter, and shall not be put to his *dum fuit infra etatem*, 1 *Leon.* 95. *Knights* Case.

But it is settled, That a Surrender makes not a Discontinuance. *Vide infra, pres a pres.*

A farther Discourse of what shall amount to a Discontinuance or not, *Vide hic Cap. supra.*

If a Copy-holder in Tayl (admitting it be an Entayl) surrender to the Lord to make his Will, and he re-grants this to the Copy holder, this is not any Discontinuance, although a Surrender to the Use of an Estranger should be admitted to be a Discontinuance, for a surrender to the Lord may not make any Discontinuance, forasmuch as he had the Reversion; agreed upon Evidence at the Bar, in *Lee* and *Brown's* Case, *Mich.* 14 *Jac. B. R.* So a Surrender of a Copy-hold Entailed to certain Uses, &c. is no Discontinuance, though the Court

N

there

there said, it had been a great Question; but by a special Custom such surrender may be a Discontinuance.

Discontinu-
ance to the
Wife.

If the Husband seized of Copy-hold in the right of his Wife, surrender this to the Use of another in Fee, who is admitted accordingly; Husband dyes, this is not any Discontinuance to the Wife, 4 Rep. 23. Bullock and Dibler's Case, nor her Heirs, but the Wife may enter and not be put to her *cui in vita*, nor her Heir to a *sur cui in vita*.

A Discontinuance may be of a Copy-hold Entail (admitting it to be a Tail) as by a Recovery in a real Action, in the Lords Court, 4 Rep. 23 Deal's Case. Quære, if it be not more properly a Bar for the time than a Discontinuance, 1 Rolls Abr. 634. Morris's Case, 44 Eliz. B. R.

In Chard and Wyat's Case, More, n. 877. The Court were divided in Opinion, whether a Surrender was a Discontinuance. The Case was this: A Copy-holder in Fee surrendered to the Use of his Will, and having a Daughter born, and his Wife with Child, he devised by Will part of his Land to his Son or Daughter with which his Wife went, & *heredibus suis legitime procreat.* and the residue he devised to his Daughter born, to have to her and the Fruit of her Body, and if she dye without Fruit of her Body, the same shall remain to the Child in the Mothers Belly; and if both dye without Fruit, then J. S. should sell the Land, and willed the one Sister to be Heir to the other. The Wife of the Devisor entred and was admitted, and had a Daughter, which afterward dyed; the Mother took Husband and they surrendered. Resolved 1st. That this was a Fee Tail in the Daughter. 2ly. That one in *ventre sa mere* could

could not take an Estate in possession by Purchase; but in this Case she may take in Remainder: But whether it were a Discontinuance the Court was divided; but they all agreed a Copyhold may be Entayled by Custom, and barr'd by Recovery by special Custom, and yet in *Moor, n. 1087.* afterwards it was adjudged, a Surrender by a Tenant in Tayl of a Copyhold, was not a Discontinuance; but by what is said before, the Law is settled as to this point. But (to cite no more in this point) where by Custom of the Manor Pleints have been made in the nature of real Actions; That if a Recovery be in a Pleint in nature of a real Action against a Tenant Copy-holder in Tayl, its adjudged that this shall be a Discontinuance, and shall take away the Entry of the Heir in Tayl, for these Pleints are warranted by the Custom, this is an incident which the Law annexeth to the said Custom, 4 *Rep. 23. Deal and Rigden.*

C A P. XX.

Of Leases of Copy-hold Estates. Leases by the Lord, and Rent reserved, and his Remedy by Avowry. And of Leases made by Copy-holders. What is a Forfeiture or not. When a Licence to make a Lease shall be said to be pursued or not. Commencement of a Lease. Leases by whom made. Bishop. Tenant in Tayl. Infant. Of Rents reserved. What things are demisable by Copy.

Of Leases of Copy-hold Land, *Vide Title Customs as to Leases and Limitations of Estates, supra.*

Of Leases of Copy-hold Land { Lord,
made by the { Tenants.

1. By the Lord, and his Avowries, and remedy for the Rent.

Lease of the
Freehold of a
Copy-hold.

THE Lord leaseth the Freehold of a Copyhold to J. S. this is good betwixt J. S. and the Lord: But the Lord cannot reserve the Rent upon such a Lease, 1 Keb. 15. Gerrard's Case.

Custom.

A Custom, That on payment of ten years Rent, the Lord should Licence to let for 99 Years, and if he refused, the Tenant might do it without Licence, was adjudged good and reasonable, Grow and Bridges, cited in 2 Keb. 344. Porphyry and Legingham.

If

If a man be seized of a Manor wherein are divers Copy-holders admittable for Life or for years, and he leaseth the Manor to another for term of Life, the Lessor may make a Demise by Copy in Reversion, to commence after the death of the first Copy-holder, and that is good enough, but the Custom of some Manors is to the contrary, and that is allowed, *Hesly, p. 54. M. 3 Car. B. C. Davis and Fortescue.*

Lord lets for Life, he may Lease by Copy in Reversion, to commence after the death of the first Copy-holder.

Lord of the Manor made a Lease to two of the Copy-holders of the Court Baron for 200 years, saving to himself the other Demesns and Services, the Lessees keep Court there, and a Copy-holder surrenders to the Use of A. in Fee. *Per Cur.* this is a good Copy; the Court may well continue for that purpose, as to Admittance of Copy-holders, for otherwise every one of his own act may destroy his Copyholders Estate, *Cro. El. p. 394. Jackson and Neal, and Lord Hatton's Case, cited there.*

Lessees of Copy-hold and Court-Baron for 200 years, what acts they may do.

If the Lord of a Manor grants a Copy-hold, rendring Rent *presato Domino*, at a certain time, & *servitia de jure debita & consueta*, his Heirs and Assigns after his death shall have this Rent, this being reserved by a Copy, 2 *Rolls Abr. 450. Crisp and Fryar.*

Who shall have the Rent.

Copy-holder makes a Lease, rendring Rent, and after surrenders parcel to the Lord, the Lord may avow on the Lessee for part of this Rent, without alledging notice or attornment by him, 1 *Keb. 94. Blat and Mole, vide.*

Avowry by the Lord for part of his Rent.

The Lord may Distrain a Copy-holder for his Rent as well as Seize: *Quære*, if a man makes a Lease at will rendring Rent, whether he may Distrain for this Rent? 2 *Brownl. p. 279. Ravel and Downe.*

Distrains.

Entry. Accep-
tance of Rent,

The Lord after acceptance of Rent, cannot enter upon the Lessee of a Copy-holder, 1 *Keb.* 15.

Whether the
accustomed
Rent be re-
served upon a
Lease by a Bi-
shop Lord of
the Manor.

Treacer was a Copy-hold Manor, within the Manor of *B.* The Bishop of *Exeter* held both these Manors in the right of his Bishoprick, the old accustomed Rent was 67 *l.* 1 *s.* 5 *d.* *Hall* Bishop demised these two Manors to *P.* for 99 years, determinable upon three Lives, reserving the old Rent. *P.* assigns them over to *N.* except the Demesns of *Treacer.* *N.* surrenders both Manors, except *Treacer.* The Bishop redemiseeth to him the said Manors, except *Treacer,* and one Farm more, reserving the old Rent, 67 *l.* 1 *s.* 5 *d.* *Per Cur.* this second Lease was good, and the 67 *l.* 1 *s.* 5 *d.* was the old accustomed Rent within the Statute 1 *El. Mod. Rep.* 203. *Thredneedle* and *Lynbam.*

Of Leases made by a Copy-holder, and of Rents reserved thereupon, *vide* Customs.

When Leases made by a Copy-holder for Years are a Forfeiture, *Vide sub Tit.* Forfeiture.

Note.
Lease no dis-
seisin.

A Copy-holders Lease is no Disseisin, though it be a Forfeiture, nor doth it alter the Estate of the Lord, 2 *Keb.* 598.

Note.
Lease not Af-
fects.

Copy-holder made a Lease for years by License, and Lessee dyed, this shall not be accounted Assets in the hands of the Executors, *Quære.* Nor be extended, *Popham* 188. But if Copy-holder make a Lease for an year, this is a Lease by the Common Law, and not customary, and shall be accounted Assets in the Hands of the Executors of the Lessee, *Popham* 188. *Yelv.* . . .

What Leases shall be good or not, in respect of Licence when it is persued or not.

Copy-holder may make a Lease for one year, without Licence, for that is warranted by the Law, by the force of the general Custom of the Realm, *Lit. 234.* and this shall be accounted Assets in the Hands of the Executors of the Lessee.

If the Lord give Licence to a Copy-holder for Life, to let the Copy-hold for five years, the Copy-holder may Lease this for three years, for this is comprehended within the Licence, inasmuch as he had given him Licence to let for more years, *M. 15 Jac. B. R. Woolridge and Bambridge*; adjudged upon a special Verdict: so it was adjudged in the same Case, *Cro. Jac. 417.* If the Lord give Licence to a Copy-holder for Life, to Lease the Copy-hold for five years, if the Copy-holder shall so long live; and he lets this for five years generally, without this limitation, *If he shall so long live*; yet this is a good pursuance of the Licence, and so a good performance; for the Lease is determinable by his death, by a limitation in Law, and therefore so much is implied by the Law, as if he had made the actual limitation. So is the Case of *Hart and Arrowsmith*, *Noy 121.* the operation of Law made such a limitation to the Estate which he made, *i. e.* if he shall live so long: But if the Copy-holder had had an Estate in Fee, it had been a Forfeiture to have made an absolute Lease, because in this case he doth more than he was licenced to do, *Popham Rep. 105.*

whereas he had an absolute Lease

A Lease not warranted by the Licence, as to the commencement.

A. obtains a Licence in Court to let his Copy-hold for 21 years, from *Mich.* last past; he makes the Lease to begin at *Christmas* following: *Per Cur.* this Lease is not warranted by this Licence, and so no *Eject. firme* lyes upon it, *Cro. El. p. 394. Jackson and Neal.*

Commencement.

When a Lease shall begin in point of computation and not in point of Interest.

Land is demised by Copy for three Lives successive, and then a Lease is made for 30 years, of the same Land, to commence after the determination of the first Estate; the Survivor dyes, leaving a Widow, who claims *durante viduitate*, according to the Custom: The *Quere* was, when this Lease shall begin, if after the death of the Copy-holder, or after the determination of the customary Estate in the Woman? It shall commence presently in point of computation, but not in point of interest, till after the death of the Widow, *2 Siderfin, Clark and Caudle, Capel and Stephens, 1653.*

By Tenant in Tayl, if warranted by the Stat. 32 H. 8.

Arthur, Copy-holder for Life, surrenders to *Sir Francis Knolls* Knight, Lord of the Manor, in Tayl, Reversion in the Crown. *Sir Francis* makes a Lease, for three Lives, to commence from the day of the date, and of the ancient Copy-hold Rent was reserved and more. Three Questions were moved by the Jury. 1. *Per Cur.* If this Land shall be said usually demised within the Statute 32 H. 8. being never demised before but by Copy? And the Court ruled, that so 2. If this Copy-hold Rent shall be said the ancient accustomed Rent within the Statute? and ruled, that so 3. Though an Herriot was not reserved in the new Lease which was payable by the Copy-hold Custom, yet it was resolved, that it was a good Lease within the Statute

Statute of 32 H. 8. if Livery was made after the day of the date, *Moor, n. 1050. Banks and Brown.*

The Land is accountable usually demisable when it is always demised; it was Sir *James Marwin's Case*. Tenant in Tayl lets a Copyhold by Indenture, rendring the same Rent as before; its a good Lease within the Statute of 32 H. 8.

A Manor by Act of Parliament was Entayled to *A. Wife of the Lord M.* with divers Remainders over, with a Proviso, That the Donees *non facerent aliquid in nocumentum vel exheredat. heredum suorum, vel, &c. sed tantum pro junctura, vel pro termino vitæ vel pro annis, vel ad voluntatem secundum consuetudinem manerij reddend. antiquum redditum.* The said Manor consisted of divers free Rents, amounting to 7 *l.* 15 *s.* Copyhold Tenements held for Lives, the customary Rent of which was 3 *l.* and Waste and Herriots. The free Rents or Copyhold Rents or Herriots were never devised before for Life or Years, or otherwise. *A. (post mortem viri)* by Fine grants and renders the moiety of the Manor for 300 years, rendring Rent, amounting to the Free and Copyhold Rents, and 8 *d.* more, payable at two Feasts, whereas the ancient Rents were payable at four; *Per Cur.* the Lease was void; the Copyholds ought to have been granted by Copy, and not by Fine, and the reservation at two days, where the Rent was payable at four days before, made the Grant void; for its *ad nocumentum hered.* and there can be no apportionment in that case, for Copyholds for Lives are uncertain, and Herriots accidental. When two Firms are joyned together the entire Rent which is reserved out of both
of

of them is a new Rent, and not the accustomable Rent, 5 Rep. 5. Lord Mountjoy's Case.

By whom made.

Ecclesiastical
person.

If a Bishop let Copy-hold Land for Life, rendring the ancient Rent; its not good, because the Successor cannot Distrain the Copy-holder for Rent; but if it be of a Manor to which a Copy-hold belongs, its good, *Lit. Rep.* 305. in *Sheers Case*.

Dean and Chapter of *Worcester*, Lord of a Manor *in jure Ecclesiæ*, of which Manor *H. G.* was a Copy-holder for Life of Lands, under the Rent of 8 s. 8 d. *per annum*, payable Quarterly, and Herriotable at the death of the Tenant; the Copy-holds were by the Custom grantable for three Lives, they demise the said Lands to *H. G.* and his Assigns, for the Lives of *R. J.* and *M.* and the survivor of them, rendring 8 s. 4 d. *per annum*, at two Feasts. Question was, if this Lease were good, or might be avoided by the Successor? *Per* the Statute 13 *Eliz. Cap.* 10. It was resolved. 1. The Lease was good, though it was made *pur auter vies*, and that the Occupants shall be punishable for Waste. 2. Customary Demises are within this Law, for this Estate granted by Copy was in judgment of Law an Estate at Will, and without doubt Lands which have been accustomed to be demised at will by those which have the Inheritance of the Land, rendring rent, are Lands accustomably let to Farm within the said Act. 3. The said Act of 13 *El.* doth not avoid the Lease, if the accustomed yearly Rent, or more be reserved, and for that an Herriot is not a thing Annual, nor a thing depending on the Rent, it sufficeth if the

Customary
demises are
not in the
Statute 13 *El.*
Cap. 10.

the Annual Rent be reserved, 6 Rep. 37. Dean and Chapter of *Worcesters Case*, Cro. Jac. 76. *Baugh and Heyns*, *mesme Case*.

As to Leases by Bishops of Manors consisting of Copy-hold Lands, and Services of Free-Tenants, and reserving the ancient Rent, *vide* 3 Keb. 372. *Mod. Rep.* 203. *Threadneedle and Lynbam*.

Infant Copy-holder in Fee leaseth for years, Infant.
without Licence by parcel, rendring Rent, at full Age he accepts the Rent, being admitted to the Copy-hold, and after ousts his Lessee. Lessee brought Ejectment, Judgment for the Lessee: *Per Cur.* this Lease for years is no Disseisin to the Lord, though it may be a Forfeiture, and this Lease is not void but voidable, and may be affirmed by acceptance, *Noy*, p. 92. *Ashfield's Case*, *Lach.* p. 199. *Vide Rolls Rep.* 256. Lease affirmed by acceptance.

By a Copy-holder or Heir before Admittance, *vide* Admittance.

As to Rents reserved.

Lands at Common Law and Copy-hold Lands are leased by one Indenture, rendring Rent; the whole Rent shall issue out of the Lands at Common Law, and not out of the Copy-hold: But if a man leaseth Land, part of which he hath by Disseisin, rendring Rent there the Rent shall issue out of the whole Land, and by the entry of the Disseisee the Rent shall be apportioned, *Moor*, n. 144. *Term. Pasch.* 5 El. But the Law is not so, for in *Collins and Harding's Case*, *Moor*, n. 723. the Judges were divided in Opinion about this very point. But in *Rolls 2 Abr.* p. 426. it is resolved, That this Rent shall issue out of the Copy-hold Land as well as out of the other Land Lease of Freehold and Copy-hold, the Rent issues out of both.

Rent apportioned.

Pleading.

Rent apportioned.

Land; for a Rent may be reserved out of the Copy-hold Land, and this is such a thing to which one may resort for a Distress, *Collins* and *Harding's* Case: And this Case is farther Reported by *Rolls* 1 *Abr.* p. 234. If a man Lease for years Freehold Land, and also Copy-hold Land by Licence of the Lord, reserving a Rent, and after grants the Reversion of the Free Land to another, and the Lessee Attorn, the Rent shall be apportioned, for this waits upon the Reversion, *vide Collins* and *Harding's* Case also Reported in *Cro. El.* p. 600, 622. The Rent issueth out of both, and is not like to a Lease of Lands and Goods, for all the Rent is there issuing out of the Lands, and it is now in the Hands of the Grantee, as one entire Reversion, and he shall declare accordingly, and although they be several Reversions, yet he shall declare upon the truth of the matter.

Copy-holder by Licence of the Lord demised the same by Indenture to the Plaintiff for twenty years, under the Rent of 25 *l. per annum*, the Copy-holder surrenders the Reversion of the one moiety of the same Copy-hold to the Use of one *N. W.* to which he was admitted, and then the Reversion of the other moiety to *W.* who was admitted. *Per Cur.* the Surrender by the name of a Reversion, is good (though the Lease is by Indenture and not by Surrender, which if it had been so, it had been derived directly out of the customary Estate) for still it is the Lease of the Copy-holder, and not of the Lord. *Quare*, if the Copy-holder in this case should forfeit his Estate, the Lease would stand good against the Lord being by Licence? And *Per Cur.* the Rent is to be divided by moyeties, according to the halves of the Reversion; and in this case it was resolved there

there needed no Attornment upon the Surrender, for the Admittance settles the Estate, *Hobart 177. Swinnerton and Miller.*

It was said by *Hale* Chief Justice, That a Lease of Copy-hold without taking notice, that this was Copy-hold, this is good for the Rent of the Copy-holder, and after the Lease spent, the Inheritance takes place, and severs the Copy-hold from being granted by Copy after, during the Lease; but when that is spent, it is well again, *Sir George Sand's Case*, cited in *3 Keb. p. 91. in Cholmly and Cooper's Case.*

A. being a Copy-holder by Licence of the Lord, leased his Copy-hold to *Smith* for years, rendering Rent, and afterwards by Deed granted the Rent to another; *Habend.* during the term, &c. to which grant the Lessee did Attorn, and paid the Rent to the Grantee. *Per Gaudy*, the Grant is good, but now it is but a Rent-seck; the Grantee cannot have an Action of Debt for it, for he is not party nor privy to the Contract, nor hath the Reversion, *1 Leon. 315. Austin and Smith.*

Copy-holder makes a Lease for years, not according to the Custom of the Manor, yet this Lease is good, so as the Lessee may maintain an *Ejectione firma*, for between the Lessor and Lessee and all others, except the Lord of the Manor, the Lease is good, *Owen 17. Downingham's Case.*

Of Leases made by those in Remainder or Reversion.

Tenant for Life, the Remainder in Fee of a Copy-hold, he in the Remainder makes a Lease by Parol. Tenant for Life and he in

Lease of Copy-hold without taking notice that it was Copy-hold.

Rent-seck;

How a Lease not warranted is good.

By one in remainder by Parol.

Re-

Remainder joyn in a Surrender, to the Use of him in the Remainder in Fee. This is a good Lease, and shall take effect in the life of Tenant for Life, and it shall be good against him in Remainder; for the Estate of Tenant for Life is extinct, and cannot hinder the Lease to have operation; like as he in Remainder grants a Rent-charge, and after the Tenant *pur vie* surrenders, the Rent shall commence presently, *Cro. El. p. 160. Dove and Williot.*

A Lease for
Life made in
Reversion.

A Lease for Life may be made in Reversion of a Copy-holder, according to Custom, but whether such a Lease be void, if made by Dean and Chapter, *per* the Statute of 37 H. 8. which extends to all Colledges, &c. *Quære 1 Rolls Rep. 202. Long and Baker.*

As to Remedy for Rents, by Entry or Action, *Vide infra titulo*, What Statutes extends to Copy-hold Lands, and *sub titulo* Actions and Suits.

What things are demisable by Copy.

Underwoods may be demised by Copy to one and his Heirs, for this Underwood is a thing of Inheritance, for after every cutting down they will grow again from the Stubbs, *Cro. El. 413. Hoe's Case.*

Tythes may be demisable by Copy of Court Roll, according to the Custom of the Manor, for they may be parcel of a Manor as (well as a Rent-charge) *Com. p. 43 Eliz. Sands and Drury.*

Tonsura prati may be demisable by Copy of Court Roll, according to the Custom of the Manor, by Prescription, *per Gandy; Vide pluis supra.*

Pleadings.

Customs quod tenens customarius in feodo possit dimittere terras pro aliquo termino annorum sine Licentia Domini, Cro. Entr. 123. Simile non excels. 21 annos, Hern 81.

C A P. XXI.

Of Licence. What Licence shall be good. By whom made shall bind or not. Licence taken for a Confirmation. When and where a Licence is to be pleaded specially, and when and where not.

QUERE if Lessee for years may grant Licence to a Copy-holder to fell Timber? But though it be good against himself, yet it is void against the Lessor, because the Licence is derived out of the Interest, and so can be of no greater extent than it, and the Assignee of the Lessee may take advantage of it, 1 Keb. 26. *Muniface and Baker*. And by *Twisden*, Where a Copy-holder hath Licence to fell (though it were repealed by the Grant of the Lord of his Interest, before the felling) yet this is no Forfeiture, though the Licence be determined by it, *ibid.*

To fell Timber. The extent by Lessee how far good or not.

Licence to make Leases, *Vide supra* Leases.

The Lord Licensed his Copy-holder, to make a Lease of his Copy-hold for 21 years, to begin at *Michaelmas* following, and he made a Lease accordingly, by Indenture; and also before *Michaelmas*, by Deed made another Lease

Concurrent Lease.

Lease void in
Interest and
good by Estop-
pel.

Lease to another, for 21 years, to begin also at *Michaelmas* following, *Per Anderson*, The making of the second Lease was a Forfeiture; the Licence is satisfied by the first Lease, and so the second Lease is without Warrant, and consequently a Forfeiture. The second Lease is void in Interest and good by Estoppel: If a Copy-holder make a Lease contrary to the Custom, it is a forfeiture before the Entry of the Lessee, *Moor*, Case 329.

Once a Licence
to make a
Lease and
always.

If the Copy-holder make a Lease for years, by Licence of the Lord, the Lessee may assign this over, or make an under-Lease without any new Licence, for the Interest of the Lord was discharged by the first Licence, 1 *Rolls Rep.* 509. *Johnson and Smart*.

What Licence
shall be good,
and by whom,
by a Lord at
will.

A Lord at Will of a Copy-hold Manor, cannot give Licence to a Copy-hold Tenant to make a Lease for years, although that he may grant a Copy-hold for Life, according to the Custom, 1 *Rolls Abr.* 511. *Petty and Debans*.

By Lord for
Life, Licence
determinable.

If a Lord for Life of a Copy-hold Manor, give Licence to a Tenant to make a Lease for years, this Lease shall not continue longer than the Life of the Lord, *ibid.* 2 *Brownl.* p. 40. *mesme Case*.

Licence to
make a Lease
upon condi-
tion, void.
Aliter upon a
Limitation.

The Lord licenceth a Tenant to make a Lease upon Condition, the Condition is void; for the Lord giveth nothing by the Licence, but doth only dispense with the forfeiture: A Licence gives not a Right, but only executes it, but a Limitation to such a Licence is good; as a Licence to let for two years, he cannot Lease for three years, *Owen*, p. 73. *Haddon and Arrowsmith*.

If a Copy-holder makes a Lease for years by Licence of the Lord, and dyes without Heir, the year not expired; Some say the Lord may enter, for the Estate out of which this Lease was derived, is determined, *Yelv. contra.* This Licence shall be taken as a confirmation of the Lord, and the Lease shall be good against him, *Popham* 188.

Copy-holder
leasth for
years, and
dyes sans Heir,
if determined.
Licence taken
for a confir-
mation.

Pleadings.

When and Where a Licence is to be pleaded specially and when and where not.

In *Ejectione Firmæ* brought by the Lessee of a Copy-holder, it is sufficient that the Count be general, without mentioning of the Licence; if the Defendant plead Not Guilty, then the Plaintiff ought to shew the Licence in Evidence: But if the Defendant plead specially, then the Plaintiff ought to plead the Licence certainly in his Replication, and the time and place when it was made; and in this Case the Plaintiff replied, That the Copy-holder by Licence first then had of the Lord, did demise, and did not shew what Estate the Lord had, nor the time and place when it was made; it is not good, for the Licence is traversable. The Defendant cannot plead, That the Plaintiff by Licence did not demise, for this is a negative pregnant, 2 *Browl.* 40. *Petty and Evans.*

Licentia dat. ad dimittendas terras custumarias,
Co. Ent. 185.

C A P. XXII.

Of Forfeitures. What shall amount to a Forfeiture of a Copy-hold Estate by act of the Party, by non-feazance or misfeazance. Of refusal of Writ, Services, &c. Non-Appearence at Courts. Of making Leases not warranted. Rent shall be said a Covenant and no Lease, and so shall be no Forfeiture. What Alienation shall be a Forfeiture or not. Of Forfeiture by wast in Trees. By Attainder of the Tenant. What act of the Husband shall forfeit the Wifes Land or not. Who shall take advantage of a Forfeiture. Where the Lord shall take advantage before a Presentment or not. Where the Forfeiture of one Copy-holder shall be the Forfeiture of another, as to Estates or Persons. What is a dispensation of a Forfeiture, and of what Forfeitures in the Life of the Ancestor the Heir shall take advantage.

Of Forfeitures.

What shall amount to a Forfeiture of a Copy-hold Estate.

By act of the Party.
By Operation of the Law.

What act of the Party respecting $\left\{ \begin{array}{l} \text{Non-Feazance.} \\ \text{Mis-Feazance.} \end{array} \right.$

Of

Of refusal to pay Rent, perform Services or Suit of Court, when they shall be causes of Forfeitures or not.

A Copy-holder hath an Inheritance by Custom, but when he doth that which is contrary to the Custom, as to cut down Trees, &c. he shall then be in no better a condition than a bare Tenant at will, and so it will be a Forfeiture.

If a Copy-holder be to pay a certain Rent yearly by his Copy to the Lord, and the Lord comes upon the Land, and demands the Rent at the day; if the Copy-holder being present, refuseth to pay it, this is a Forfeiture; but if in such Case the Copy-holder saith to the Lord, he hath not his Rent ready, this is not any Forfeiture, for the Lord may Distrain, *1 Rolls Abr. 506.* therefore the Case in *Cokes Copy-holder, p. 189.* is not Law, which saith, That if the Copy-holder tells his Lord, that he wanteth Mony to discharge the Rent, and intreateth him to forbear, unless the Lord giveth his consent, that this is a Forfeiture, *vide Noy, p. 58. Crispe and Fryar, Cro. El. 505. mesme Case.*

A Widow had Copy-hold Land, and knew not how to pay her Rent, and divers persons came for the Rent, but she dismiss them with dilatory Answers; last of all comes a young Gallant and demands the Rent, she answers, That she did not know him, but if he would dance before her, if she liked his dancing, she would pay it: This denial was adjudged no Forfeiture, not being wilful, *Lit. Rep. 268 in Paston and Ubert's Case.*

Voluntary refusal.

If the Copy-holder be absent when the Lord demands the Rent at a day, and none is there to pay it, this is a refusal in Law, yet this is no Forfeiture; for this amounts not to a voluntary refusal; and there ought to be a demand of the person of the Copy-holder to make a Forfeiture, *Hob. p. 135. Denny and Lemon, p. 38. El. B. R. Crisp and Fryer.* And therefore that other Assertion in *Cokes Copy-bolder, p. 190*, That if the Lord continue in making his demand upon the Land, and the Copy-holder is still absent, that this makes the Copy-holders Estate subject to a Forfeiture, seems not to be Law, for the Lord may have other remedy for his Rent, *William's Case* cited in *Latch 122. Grey and Ulisses* was thus: The Lord demanded the Rent of his Copy-holder, and he answered that he had it not with him then, but that he would pay it as soon as he could; the Lord said, *pay this at my House such a day*, which House was within the Manor, it was resolved that the first words were not any Forfeiture, but when the Lord assigned him a day certain, at which day he pays it not, this failure amounts to a wilful refusal, and was a Forfeiture: But had the place been out of the Manor, it had been no Forfeiture, which *Crew Chief Justice* agreed to.

Absence.

Notice to pay the Rent at a place out of the Manor.

Not paid at the last instant of the day.

Copy-holder in Fee, rendring Rent at *Michaelmas* and *Lady-day*, he suffers the Rent to be unpaid for three years, the Lord at the last Instant of the day of payment demands the Rent upon the Land, and the Copy-holder is not there to pay it, the better Opinion was, that it is a Forfeiture, *Moor, n. 468. Crisp and Fryer.*

An Act which makes a Forfeiture ought to be to the disherison of the Lord of his Copyhold, not of a collateral thing.

Copy-holds are determinable the same way as Estates at Will. When a Copy-holder doth acts as Owner, not warranted by the Custom, 5 Rep. 13. as Waste, unless the special Custom aid, 2 Keb. 466. *Ivery's Case*.

If the Estate of the Lord of the Manor cease by limitation of Use, and the Use and Estate of it is transferred to another, who demands the Rent of the Copy-holder, and he denies to pay it, this is no Forfeiture without notice given to the Copy-holder of the Use and Estate, *Beconshaw* and *Southcor's Case*, cited in 8 Rep. 92. *Francis's Case*.

Notice of the alteration of the use and Estate, or else no Forfeiture for denial of payment of Rent.

Bargainee of a Manor by Deed Indented and Inrolled shall not take advantage of the Forfeiture of a Copyhold for denial of payment of Rent to him, without notice given to him of the Bargain and Sale, agreed for Law, in *Francis's Case*, 8 Rep.

Copy-holder before any Rent due saith, he will not pay any Rent to the Lord hereafter; or when a Court is to be holden, that he will not appear to do any Suit at the Court of the Lord; these are no Forfeitures: But if his Rent being due, he denies it, or when the Court is holden, he saith he will not do any Suit, the same is a Forfeiture, *Sir Christopher Hatton's Case*, cited 3 Leon. 108. in *Tavernor* and *Cromwell's Case*.

What words of denial amount to a Forfeiture or not.

Vide supra, Paston and Ubert's Case.

In case of the forfeiture of a Copyhold, either for Rent or Fine, the Lord must demand the Rent or Fine of the person of the Tenant; *Fine.* and therefore in *Denny* and *Lemon's Case*, *Hob.*

Demand must be made of the person of the Tenant. p. 135. In Trespass by the Copy-holder against his Lord; the Defendant pleads he had admitted the Copy-holder, and assessed a Fine of 20 Nobles upon it, and had appointed him to pay it to his Bayliff, at his House, being within the Manor, three Months after, and alledged That he had not paid it accordingly. The Plaintiff demurs, the Lord having not shewed, that the Fine assessed was reasonable: But *Per Cur.* the Lord is not bound to aver that, but it must come on the Copy-holders side, to shew the circumstances of the Case, to make it appear to the Court to be unreasonable: But the Opinion of the Court was against the Lord in this Action, because he had not laid a demand of his Fine at the time it grew due, or sometime after, of the person of the Tenant.

Refusal to pay an excessive fine, no Forfeiture.

If the Lord demand an excessive Fine of his Copy-holder, and he refuseeth to pay it, its no Forfeiture; *aliter* where it is a reasonable Fine; and the Court and Jury shall be Judges of the reasonableness of it. But if a Fine be certain, the Tenant is to bring it with him to Court, and to pay it before Admittance, and if he be not ready to pay, it is a Forfeiture, *Moor, n. 851. Dalton and Hammond. Cro. El. p. 779. mesme Case.*

No notice need where a Fine is certain; *Aliter* where its uncertain.

Where a Fine is certain no notice or demand is necessary, *contra* where it is uncertain; and where the certainty is dubious, the refusal is no Forfeiture, 1 *Keb. 154. Wheeler and Honour.*

Tender and refusal is good payment, *Mod. Rep. 77. Legingbam's Case.*

Upon unreasonable Fine the Tenant may refuse to pay.

In *Dow and Golding's Case*, The Question was, whether the Lord of a Manor may assess two years and and half value of Copyhold Land, according to wracked Rent, for a Fine

Fine upon Surrender and Admittance, and for non-payment enter for a Forfeiture. All the Court conceived, That one year and an half Rent improved, is high enough, and two year and an half is unreasonable; and therefore the Plaintiff in Trepas might well refuse the payment of it, and the Entry of the Defendant for a Forfeiture is not justifiable: Adjudged *pro quer. sur demur.*

What Fine is unreasonable.

If the Ancestor had divers Copy-holds, and the Lord demands of the Heir one entire Fine for them all, the Heir may refuse payment; the Lord ought to make several demands, because the Heir may accept one and refuse the other. And Waste in one of the Copy-holds is not a forfeiture of the other, *Cro. Eliz. 779. Dalton and Hammond.*

If the Lord demands one entire Fine for divers Copy-holds, the Heir may refuse.

If a Fine by the Custom of the Manor, upon the Admittance of a Copy-holder be certain; if the Lord demand this Fine, and the Copy-holder denies to pay it on demand, this is a Forfeiture presently without Presentment: But if the Fine by the Custom of the Manor be uncertain, though a reasonable Fine be assessed, yet it being uncertain, the Copyholder is not bound to pay it on demand presently, but shall have convenient time to discharge it, *1 Rolls Abr. 507.* But if he assess an unreasonable Fine, and the Copy-holder refuse to pay it, its no Forfeiture; therefor the Case of *Turner and Cromwel*, cited in *Crisp's Case* is not Law, *1 Rolls Abr. 507.*

Refusal to pay a Fine certain.

Present Forfeiture without presentment.

It was held in the Case of *Fanshaw and Bond*, That if a Copyholder refuseth to pay a reasonable Fine, or to be admitted to the Copyhold, this is a Forfeiture of his Estate, *Stiles p. 387.*

Refusal to be admitted, and to pay reasonable Fine.

Services.

If a Copy-holder do not perform the Services due to his Lord, this is a Forfeiture, 43 E. 3. 25. b.

What words of denial to perform Services shall be a Forfeiture or not.

The Lord comes to the Copy-holder and requires him to do his Services, (*viz.*) such and such, and the Copy-holder answers, *You shall have them, if they are due by Law, but it shall be tryed at Law first*; this was adjudged to be no Forfeiture in P. 16. *Eliz. Vernon and Huggin's Case*, cited in *Lach*, p. 122. *Grey and Ulysses Case*.

Not appearance at Court.

The not appearing at Court was a Forfeiture. Now a Copy-holder said, *If it were a Court he would appear, if none, he would not*; though this appear to be a Court, yet this is no Forfeiture, because no wilful contempt. *Per Twisden*, in the Case of *Muniface and Baker*, 1 Keb. 25. *Willis's Case*, and *Parker against Corker*, cited in the Case of *Wheeler and Honour*, 1 Keb. 154. *Stiles*, p. 141. *Parker and Cooke*. *Per Rolls*, if there were no controversie about the Courts being well held or not, and that the words were used only as a Shift, its then a Forfeiture, else not.

Warning of the Courts being held, and where,

It was a Question whether a Copy-holder not coming to the Lords Court to do and perform his Suit in three years time, be a Forfeiture. It must be proved he had warning of the time of holding the Court, for the Lord may hold his Court when he pleaseth, 3 Bulstr. 80. *Belford and Adams*.

If a Copy-holder in Fee *retraxit*, *Scil.* withdraw his Suit for many years to the Court of the Lord, no warning being alledged to be made by the Lord to him when he held his Courts, its no Forfeiture, it is but a negligence; *aliter*, if he had been warned, and then had re-

refused to have done Suit; 1 *Rolls Rep.* 256.
Adam's Case.

The Manor of declaring when a Copy-Nar. holder is summoned, and refuseth to do his Services, 3 *Bulstr.* 268. *Hammond's Case, Stiles* 241.

If the Copy-holder doth not come to the Court of the Lord, after a particular Summons made to their persons; this was adjudged a Forfeiture without exprefs refusal, *Noy*, p. 5. *Sir Christopher Hatton's Case*, cited in *Crisp* and *Fryer's Case*, 1 *Rolls Rep.* 429. *Bulleuant* and *Bickerstaff.*

Not coming upon notice without refusal exprefs, is a Forfeiture.

General warning within the Parish is sufficient; for if the Tenant himself be not resistant upon his Copy-hold, but elsewhere, his Farmer may send notice to him of the Court: If a man be so weak that he cannot travel without danger, &c. or if he have a great Office, &c. these shall excuse, *Sir John Branch's Case*, 1 *Leon.* p. 104. Now *Sir John* had by his Letter of Attorney appointed the Son of his Farmer his Attorney to do the Services for him due for his said Copy-hold. *Per Cur.* such a Person so appointed might Essoyn *Sir John*, but not do the Services for him, for none can do the same but the Tenant himself; therefore the third Resolution in *Tavernor* and *Cromwel's Case*, *Cro. El.* 353. seems not to be Law, *Vide Coke's Ent.* 288. *Tavernor* and *Cromwel's Case*, of a general Summons at the Church.

General Summons or warning at Church.

The Custom was, If any Copy-holder in Fee dye seized, and his Heir comes not at the next Court and claims the said Tenements, and prays to be admitted to them; then a publick Proclamation shall be made in full Court, That the Heir shall come to the Court to claim, and be admitted; and so at two other ensuing Courts the

Services not to be performed by an Attorney. An Essoyn may.

Custom, if the Heir come not and pray to be admitted after three Proclamations, he shall forfeit, but not if he be beyond Sea.

the like Proclamation; and if the Heir come not, then the Lord to seize them as forfeited, *Per Cur.* this Custom and non-claim shall not foreclose the Heir which was beyond Sea at the time of the Proclamations made; for by intendment of Law he cannot have notice, &c. But if the Heir had been within the Realm at the time of the first Proclamation, and after goes beyond Seas, the Proclamations shall bind him, though he be beyond Sea at the time of the other Proclamations made, for he shall not defeat the Lord by his own Act, 8 *Rep.* Sir Rich. Lechford's Case, *Cro. Jac.* p. 226. *Underhil* and *Kelsey*; he cannot return when he will, and the Law doth not compel one to impossibilitates, though *Coke* then Puisny Justice, in that Case of *Underhil* was of another Opinion, and he might by Letter of Attorney pray to be admitted, and *Cro. Jac.* 101. *Whitton* and *Williams*.

The Proclamations to be proved *viva voce*.

Proclamations whereby the Lord claims Forfeiture, ought to be proved *viva voce*, and not only by the Court Rolls: The Proclamation was, That *J. S.* come in and be admitted to the Lands descended unto him, which, the certainty of the Lands being before declared, is sufficient, unless the Custom be contrary, and not like a demand of Rent, which being generally of so much, is ill; especially the Custom of the Manor being to demand it generally, and not to specify the Lands, 1 *Keb.* 287. Lord *Salisbury's* Case.

Homage forfeit for refusing to make a presentment.

If a Jury or Homage of the Manor after Oath taken to present the Articles of the Court, refuse to make a presentment according to their Oath, If they are Copy-holders, this is a Forfeiture of their Estate, *Dyer* 4 *El.* 211.

As to Misfeazance, what acts made or done by a Copy-holder shall be a Forfeiture.

Note, Every act that makes a Forfeiture, ought to be 1st. To the disherison of the Lord, 2ly. A voluntary act against the Custom; therefore a Trespass on the Demesns of the Lord is no Forfeiture.

As to making Leases not warranted.

For the Lord of a Manor to avoid a Lease for a Forfeiture, by making a Lease contrary to the Custom, there ought to be direct proof made of a Lease certain, with beginning and ending certain; so to make any other act or thing a Forfeiture, this must certainly appear to the Court; and the Oath of a Stranger in the Lords Court to the Homagers, That a Copy-holder had made a Lease for ten years, that so the Homagers may find and present the Forfeiture, shall not be of force, especially the Copy-holder continuing in possession, and dying seized of his Copy-hold Estate, and this never came in question till after his death, 1 Bulstr. 189. Hamlen's Case.

There must be certain proof of such a Lease.

Copy-holder for Life makes a Lease for a year, and afterwards makes a Lease to the same party for another year, to commence one day after the first year, and another Lease for another year to commence at a day after the second year, and after surrenders his Copy-hold to the Lord; the Lord enters and makes a Lease to the Plaintiff in the Ejectment: *Per Cur.* 1. Although the general Custom of the Realm allows a Copy-holder to make a Lease for one year, this ought to be in present, and

A Lease made for years, excepting two days in each year, &c. is a Fraud, and shall be a forfeiture.

he

he cannot make one for another year in reversion. 2. The Lease in reversion was a Forfeiture, and when the Surrender was made to the Lord, this Lease was void against him, and his Interest discharged without presentment and seizure for the Forfeiture, for which his Entry was lawful, and Judgment *pro Quer. Jones* 249. *Mathews and Weston*, 1 *Bulstr.* 215. *mesme Case. Rolls Abr.* 510. *mesme Case.*

This Case is thus Reported by *Rolls*: If a Copy-holder for Life agrees to make three several Leases by Indenture, the one to commence after the other, there being two days between the end of the first and the commencement of the second, and so between the second and the third, and after he executes them at one time, this is a Forfeiture; for this is apparent Fraud, and a greater Estate than for one year passeth presently, *Rolls Abr.* 508. *Mathews and Weston.*

If a Copy-holder makes a Lease for one year, and covenants, that after the end of this year he shall have the same for another year, and so in this manner *de anno in annum*, during the space of ten years; this is no such Lease as shall make a Forfeiture of his Copy-hold Estate, because he hath no lawful Lease but for one year only, 1 *Bulstr.* 187, 190. *Hamlen's Case*, 6 *Rep.* 35. *b. Plowd.* 237. *b. Cro. Jac.* 301. *the Lady Mountagues Case.*

A Copy-holder makes a Lease for an year; excepting the last day of the year, and so from year to year, excepting the last day of every year as long as he lived: The Question was, if this were such a Lease as would cause a Forfeiture; for it was not a Lease for an entire year, neither is it a Lease for two years together: *Per Cur.* it is a Forfeiture. Its a certain

tain Lease for years excepting two days, which is a Lease in effect for more than one year, *Cro. Jac. p. 308. Luttrell and Weston.*

A Lease for three years by Parol is a Forfeiture, whether the Lessee enter or not, and this for the unlawful Contract made to the disherison of the Lord; and a Lease to commence at a day to come is a Forfeiture, because it is not avoidable by any of the Parties, *Moor, n. 508. East and Harding*; and so in *Harding and Turpin's Case, Hetly, p. 122.* If a Copy-holder make a Lease for years, to commence at *Michaelmas* next, its a Forfeiture presently; and so *Cro. El. Jackman's Case 351.* A Lease for years of Copy-hold Land, by Indenture or Parol, is a Forfeiture, unless there be an express Custom to warrant it, So *Cro. El. East and Harding's Case.*

Lease Parol.

Lease to commence at a day to come.

The Lord licenceth a Copy-holder to make a Lease of his Copy-hold for 21 years, to begin at *Michaelmas* following, and he made a Lease accordingly by Indenture, and also before *Michaelmas* by Deed made another Lease for 21 years, to begin at *Michaelmas* following, *Per Anderson*, the making of the second Lease was a Forfeiture; the Licence is satisfied by the first Lease, and so the second Lease is without warrant, *Moor, n. 329.*

By concurrent Lease.

If a Copy-holder Lease for three years by the Custom, and he leaseth for three years, and so from three years to three years, unto nine years, this is a Forfeiture, for this is a Lease for six years at least, 1 *Rolls Abr. 508. Luttrell and Weston.*

A Lease from three years to three years.

T. Let Copy-hold Lands to W. by Articles of Agreement, with promise and Covenant to hold for a year to halves, at such a Rent, according to the Custom of the Manor, and
fo

A Covenant
and not a
Lease, and so
no Forfeiture.

Lease for
years not war-
ranted, is no
disseisin to the
Lord.

so from year to year for five years; the Question was, If this be a Forfeiture? And by the Justices in *C. B.* 19 *Car. 2.* in the Case of *Lenthall* and *Wallop* against *Thomas*, Its no Lease; A Covenant to hold to halves makes a Lease in no case. A covenant and promise that *J. S.* shall have my Lands for five years, may be a Lease where a Lease may be made, especially where the words Covenant and Agreed is added, but only by a favourable construction of Law, which shall never work a Forfeiture, 2 *Keb. p.* 267.

Note, Lease for years by a Copy-hold, though it be a Forfeiture, yet its not any disseisin to the Lord, 8 *Rep.* 44. *Noy*, 92. Therefore Infant Copy-holder in Fee, leaseth for years, sans Licence, rendring Rent, at full Age he accepts the Rent, and after ousts the Lessee. The Lessee brings *Ejectment*, and Judgment for him, *Per Cur.* this Lease may be affirmed by acceptance; and agreed that such a Forfeiture doth not bind an Infant.

What Alienation shall be a Forfeiture, and what not.

Surrender by a Tenant for Life to the Use of another in Fee, is no Forfeiture, *Moor*, n. 983. *Oldcor's Case*.

If Tenant for Life of a Copy-hold suffer a Recovery, as Tenant in Fee, this is no Forfeiture of his Estate, for the Free-hold is concerned; and it is in a Court Baron where there is no Estoppel, *Mod. Rep.* 199. *Bird* and *Kick* 200.

If he make a Deed of feoffment and no Livery, its not a Forfeiture; nothing passeth, and so its no alienation; *aliter* of a Lease,

Quære,

Quære, if the Feoffment be with Letter of Attorney, *Co. Lit.* 59.

Of Forfeitures by Waste.

If a Copy-holder erect a new House upon waste. his Copy-hold without Licence, this is not any Forfeiture, for this is for the melioration of the Tenement, *1 Rolls Abr.* 507. *Cecil and Cave.* If he erect a Mill upon his Copy-hold, it is a Forfeiture, by *Dodredge, Lach. p.* 123. in *Grey's Case.* Erecting a new House.
A Mill.

If a Copy-holder build an House upon his Copy-hold, and after pulls it down again, this is a Forfeiture, *1 Bulst.* 50. *Brook and Bear.*

Where the Lord hath any other recompence, the Law will not make any Forfeiture, as Custom to amerce or fine for Hedges Inclosing, *Lit. Rep.* 267. in *Paston and Uibert's Case.*

If a Copy-holder commits waste against the Custom of the Manor, it is a Forfeiture, *4 Rep.* 27. *Clifton's Case.*

Voluntary waste is a Forfeiture of the Copy-hold, by the Common Law; but negligent waste not, without a Custom, *Per Anderson and Walmsly, Noy p.* 51. in *Farmer and Ward's Case, Vide infra, Co. Lit.* 63. a. Voluntary per-
missive.

If a Copy-holder suffer the House to decay and to be wasted, this is a Forfeiture, *1 Rolls Abr.* 508. *Rastal and Turnor*: But if a Stranger commit waste upon the Copy-hold, without the assent of the Copy-holder himself; this is not any Forfeiture of the Estate of the Copy-holder, *4 Rep.* 27. *Clifton's Case.* Stranger com-
mits Waste.

If a Copy-holder for Life cuts down Timber Trees, the Lord may take them: If Under-Lessee for years of a Copy-holder, cuts down Timber Trees. Under-Lessee
cuts down
Timber Trees.
Tim-

Cutting Timber Trees.

Timber, it shall not be a Forfeiture of the Copyhold Estate, *Stiles*, p. 233.

If a Copy-holder cut down great Trees (*viz.* Elms) to repair his Copyhold House, which is in decay, and employ them accordingly, this is not any Forfeiture, because the Law allows this to him, without any Custom to warrant it, *M. 38, 39 El. B. R. East and Harding's Case*. So, if he cut down two great Trees for that purpose, and only employ one of them, yet this is not any Forfeiture, for a man cannot precisely know what is sufficient, *ibid.* But if he lets them lye, and suffers them to rot, this is a Forfeiture.

If a Copy-holder for Life cuts down great Trees, this is a Forfeiture, and if a Custom for so doing is alledged, it is unreasonable and not good, *Cro Car. 220. Rockey and Higgins*.

If a Copy-holder fell Trees, its no Forfeiture, because it may be for the reparation of the House; but an act afterwards, as selling them, may cause a Forfeiture, *9 Rep. 76*.

Amputation of Top-boughs.

A Copy-holder by the common Law may lop off under Boughs without especial Custom; but the amputation of the Top-boughs will cause the putrefaction of the whole Tree, and so that is Waste, and a Forfeiture, *Cro. El. 361. Drawbridge and Cox*.

Dodderidge put the Question in *Cornwallis's Case*, 227. If Tenant permit waste, and after repair, may the Lord enter? *Per Hicham*, it was once a Forfeiture and so remains.

If the Lord grant to his Copy-holder the Trees growing upon the Land, and which afterwards shall grow, and that it shall be lawful for the Tenant to cut and carry them away; The cutting down the Trees is no Forfeiture of his Copyhold, because he had dif-

dispensed with the Forfeiture by his Grant, but he cannot cut the Trees that shall grow after, for as to them the Grant is void, *Moor*, n. 234.

As to waste about Trees, *Vide sub titulo Customs*.

If there be no Custom to the contrary, Waste. waste either permissive or voluntary, of a Copyholder is a Forfeiture of his Copy-hold, *Co. Lit.* 63. a. *Vide supra*.

The manuring of Land to Hop Ground, was agreed to be a Forfeiture.

If the Copy-holder convert part of the Land into a Piscary, its a Forfeiture, *Lit. Rep.* 267, 268. in *Paston* and *Urbert's Case*.

Of Forfeiture by Attainder of the Tenant.

Custom of the Manor was, if any Copyholder within the Manor committed any Felony, and this was presented by the Homage, that the Lord may take and seize the Land. A Copy-holder committed Felony, and this was presented by the Homage, and after the Copyholder was Indicted, and by Verdict Acquitted, and the Lord entred: *Per Cur.* Its a good Custom, but they delivered no Opinion, whether the Lords Entry in this case was lawful, though it seems the Lord is concluded and he cannot enter; to which purpose there is cited a pretty Case. A man was Indicted as principal for the death of J. S. and another as accessory in receiving the principal, after the principal was Outlawed, and the accessory hang'd, and the Lord seized the Land of the accessory as Escheat. Afterwards came the principal and reversed the Outlawry, and was found Not Guilty, and the Heir of him which was hang'd

P

entred

entred upon the Lord; adjudged, inasmuch as there cannot be an accessary unless there be a principal, that the Entry of the Heir was lawful, 2 *Brownl.* 217. *Gittins and Cooper*; So its a good Custom in 1 *Leon. p. 1. Burnford and Packington.*

Copy-holder for Life was arraigned for Felony and convicted, and prayed his Clergy, whereupon the Plaintiff, as Lord, entred for the Forfeiture, without alledging any special Custom or Attainder, *Q. 2 Keb.* 451, 456. *Jury and Pawlet.*

Of other acts which are Forfeitures.

If a Copy-holder forgeth a Customary, containing divers false Customs, and pretending them to be true Customs; *Quære*, if this be a Forfeiture, 3 *Leon.* 107, 108. *Tavernor and Cromwel.*

By Inclosure.

Custom is, That the Lord hath a Field-course for five hundred Ewes, over the Lands of the Copy-holder, from *Michaelmas* till *Lady-day*, in all the Lands of the Copy-holders, not inclosed; the Custom was too, That if they did Inclose he might Fine them; *Per Cur.* Inclosure is no Forfeiture, *Pafton and Utbert*, 5 *Car. 1. Hutton*, p. 102. *Lit. Rep.* 246. *mesme Case.*

Rescous.

Rescous by a Copy-holder is a Forfeiture.

Replevin by a Copy-holder.

If a Copy-holder bring a Replevin, it is a Forfeiture, 1 *Rolls Rep.* 48. in the case of *Warn and Sawyer.*

Outlawry.

A Copy-hold is not forfeited by Outlawry in a personal Action, for the Lord is not prejudiced by it, and yet the King shall have the Profits.

Inclosure.

Bare Inclosure is not Forfeiture of a Copyhold, *Hetly*, p. 7, 8.

The

The manuring of Land to Hop Ground, was agreed to be a Forfeiture.

If Doal Marks are about a Copy-hold, and the Copy-holder makes such Ditches that he defaceth the Doal Marks, this may be a Forfeiture, for in time it may prove to the disinheritance and loss of the Copy-hold.

What Acts of the Husband shall forfeit the Wives Land or not.

Feme Copy-holder of Inheritance takes Husband, Husband makes a Lease for years; the Lord enters for a Forfeiture; Husband dies, the Feme dies; the Heir of the Wife enters, and his entry was adjudged lawful, *Palmer's Rep. 387. Savern and Smith. 35 El. Sandley's Case. 2 Rolls 344. mesme Case.*

Lease of a Copy-hold shall not bind the Wives Estate of Inheritance.

Denial of Rent by the Husband shall be a Forfeiture against the Wife, and so shall waste. (*Quere*, if waste be not a Forfeiture by the Statute of Gloucester, which extends to Copy-holds) but not collateral acts; as cutting Trees &c. By *Doddridge*, waste at Common Law by the Husband shall bind the Wife, but not a Feoffment; and he took this difference; where the Copyhold came to the Woman after Coverture, his Forfeiture shall not bind her, for then it cannot be said it was her folly to take an Husband that would forfeit, &c. *Palmer's Rep. 387. Savern and Smith.*

Denial of Rent by the Husband.

Diversity.

If a Feme Copy-holder *pur vie*, takes Husband who commits waste, this shall bind the Wife; and the difference is as to this and the Husband's making a Lease. In waste the Forfeiture goes to the Inheritance of the waste, which continues for ever; but in *Savern and Smith's Case* this Forfeiture determines with the Lease:

Waste committed by Husband.

By Estranger. But if a stranger commits waste without the assent of the Husband, this is no Forfeiture, 4 Rep. 27. *Clifton and Molineux, Vide plus infra.*

A Feme Copy-holder takes an Husband, who lets the Land for more years than the Custom doth warrant; it is *Quære*, whether this shall bind the Wife, as a condition in Law, *Per Wray*. If the Husband deny to pay the Rent, or to do Suit of Court, these are present Forfeitures which shall bind the Wife, for they are things that the Lord must of necessity have; but *Quære*, of the Lease, saith the Book, *Cro. El. 149. Hedd and Challenger*: But it hath been resolved *ut supra*, in *Sarvern's Case*.

Who shall take advantage or enter for a Forfeiture, and of what Forfeitures or not.

After a Copyhold is dismembr'd from the Manor, yet of what Forfeitures, the Grantee or Feoffee shall take advantage.

It was a Question in *East and Harding's Case*, If the dismembring of the Inheritance of the Copyhold Land by the Feoffment of the Manor; had disabled from taking the advantage of the Forfeiture. It was ruled with this difference, that all Forfeitures which accrew by reason of any matters of the Court, are discharged, but not Forfeitures at Common Law, as Waste, or Leases made to the disherison of the Lord, but the Feoffee of them made in his time, shall enter and take advantage thereof, *Moor, n. 508.*

Lessee for years.
Dom. pro tempore.

Lessee for years of a Manor shall take advantage of a Forfeiture committed by a Copyholder, for he is *Dominus pro tempore*, *East and Harding's Case*: So *Tr. 10. Jac. B. C. Rowls and Mason*. Lessee for years shall take advantage of a Forfeiture by waste, after his Lease made, and before the commencement of his Term, *Moor, n. 508.*

If

If the Lord of a Manor, in which are Copy-holders, Tenants of the Manor, and the Lord grant to a Stranger the Free-hold of a Copy-hold in Fee, although by this his Tenement is divided from the Manor, and not demisable *per Copy* again; yet the Grantee of the Free-hold shall take advantage of a Forfeiture committed after by the Copy-holder, for he ought to pay his Rent to the Grantee. So in this case, if the Grantee of the Frank-Tenement make a Lease for years of the Frank-Tenement, this Lessee for years shall take advantage of a Forfeiture committed after by the Copy-holder, for that he is *Dominus pro tempore*, 1 *Rolls Abr.* 509. *East and Harding, Cro. El.* 499. *mesme Case*. For Copy-holder as to the Forfeiture of his Estate, remains in all degrees as before the severance thereof from the Manor.

If a Copy-holder makes a Lease for years, which is a Forfeiture at Common Law, and afterwards the Lord make a Feoffment, or a Lease for years of the Free-hold of this Copy-hold to another, the Feoffee or Lessee shall not take advantage of it, for the Lease of the Free-hold made by the Lord before Entry, is an assent that the Copy-holder shall continue his Estate, and so is in nature of an affirmance, or confirmation of the Lease, *Owen, p. 63. Pen and Merival: But*

Where Lessee or Feoffee shall take advantage.

If the Lord of a Copy-holder for Life, Lease the Copy-hold for years, to commence after the end, forfeiture or determination of the Tenant for Life, and after the Tenant for Life commits a Forfeiture, by making a Feoffment, if the Lord will not enter for the Forfeiture, yet the Lessee for years may, 8 *Rolls Abr.* 858. *Mere and Ridcalt.*

Where he shall.

He in Remain-
der,

Copy-holder for Life, the Remainder for Life commits a Forfeiture, he in the Remainder shall not enter, but the Lord, because the Remainder is to commence in possession after the death of the Lessee by the Custom.

Where the Lord shall take advantage before Presentment, or not.

Presentment,
where materi-
al or not.

Presentment is not of necessity, but for the Lords better Instruction of the Title, and he may, if he will, take advantage of the Forfeiture before Presentment, *Cro. El. p. 499. in East and Harding's Case.* And therefore the distinction of *Coke's Copy-holder* is frivolous (except the Custom is so) though as for those Offences which by common presumption the Lord himself cannot have notice without notice given, are usually presented, as if a Copy-holder commit Felony or Treason, or be Outlawed or excommunicate, a Presentment seems necessary that the Lord may have the profits of his Copy-hold Land. So if a Copy-holder alien by Deed, or do a thing notorious (as cutting down and selling of Trees of the Copy-hold Land by the Tenant,) its not material whether it be presented by the homage or not, *3 Keb. 641. Pascal and Wood's Case.* The presentment is to give notice to the Lord, and not to intitle him, and he may take notice if he will, *Lach. p. 227.*

Where and in what Cases the Forfeiture of one Copy-hold is the Forfeiture of another, and where and in what Cases not, as to Estate or persons.

Divers Copy-holds were granted by one Copy, and several *Habendums*, and several *Reddendums*

dendums for every of them, and they all began at one time, and were to end at one time; the Copy-holder commits waste in one of the Copy-holds, The Question was, Whether that should be a Forfeiture of them all. *Per Cur.* they are as several Grants and several Copies, and the Forfeiture of the one is not the Forfeiture of the other, *Cro. El. p. 353. Tavernor and Cromwel, 4 Rep. 24. mesme Case.* Its not material if the Copy-hold be in one or several Copies, but if the Tenure be one or several.

What Forfeiture of part shall be of the whole or not.

If a Copy-holder make a Feoffment of one Acre of Land, parcel of his Copy-hold, all the Copy-hold is not forfeited by this, but only this Acre, *p. 41. El. B. R. Fuller and Terry.*

But if a Copy-holder cuts down a Tree which grows upon one Acre of Land, parcel of his Copy-hold, this is a Forfeiture of all his Copy-hold; for that the Trees are to be employed in Buildings and Reparation of the Houses and Copy-hold, and therefore by the making of waste all the Copy-hold is impaired, So *3 Keb. 641. Pascal and Wood.*

If divers Copy-holds Escheat to the Lord, and he re-grants them to another, *Tenendum per Antiqua Servitia, &c.* they shall be severally held as they were before the Escheat, *4 Rep. 27.* And the Fines shall be several, as *Huart and Hamond's Case, 4 Rep. 28.* and consequently the Forfeitures.

Tenant for Life, Remainder in Fee of a Copy-hold, Tenant for Life commits a Forfeiture by waste, and the Lord enters, this shall not bind him in Remainder, *Trim. 39 El. B. R. Rastal and Turner.* But the Lord shall hold it during the Life of Tenant for Life. So Custom is, upon Surrender made to one and his Heirs, if three Proclamations pass, and he doth not

Where the Forfeiture of one person shall be the Forfeiture of another persons Estate, and wherenot.

Remainder
not forfeit by
the act of Ten-
nant for Life.

come in to be Admitted, that the Estate shall be forfeit. Surrender is made to *A.* for Life, the Remainder to *B.* in Fee. *A.* comes not in, this shall not forfeit the Remainder, *Yel. p. 1. Baspool and Lond.* For the Estates of *A.* and *B.* are divided Estates, and the Custom shall be intended of an entire Fee-simple given to one person, and the Custom being to bar an Estate, shall be taken strictly. It is made a Quæry in that Case of *Yelverton*, if such a Surrender be made to *A.* and *B.* and their Heirs, and *A.* comes within the time of the Proclamations, and *B.* not, if *A.* shall have all, or that a moiety shall be forfeit? I conceive a moiety shall be forfeit to the Lord, as being Joynt-Tenants. But Quære farther of Co-partners in such case who are but one Heir, *Cro. El. 879. mesme Case.*

Lessee forfeits
his own Estate
and not the
Estate of his
Copy-holder.

If a Copy-holder let for years by Licence of the Lord, and after the Lessee makes a Feoffment, this shall forfeit only his Estate, and not the Estate of the Copy-holder, *1 Rolls Abr. 509. White and Hunt.*

Where the
Wife shall suf-
fer for the
Forfeiture of
her Husband
or not.

If a Woman Copy-holder takes Husband, and the Husband makes a Lease for years, although the Lord enters for the Forfeiture, yet after the death of the Husband, this is no Forfeiture to the Wife, but that she may well enter, for this act was a wrong to the Wife as well as to the Lord, and where it is a wrong to the Wife there is no reason it should be a Forfeiture, *1 Rolls Abr. 509. Cro. Car. 7. Savern and Smith's Case.* But if the Husband seized of a Copy-hold in right of the Wife, do waste, this Forfeiture shall bind the Wife after the death of the Husband, for this act was not any wrong to the Wife, but lawful

as to her, and only a wrong to the Lord,
4 Rep. 27. Note the difference.

Copy-hold is demised to two for Life successive, where the Custom is they may not cut Trees; the first Tenant cuts, its a Forfeiture of him in Remainder, as well as of his own Estate; if a Stranger cuts Trees, or another who occupies at their sufferance, this is a Forfeiture of the Copy-hold, Moor 149. but *Query* of the last.

Cutting of Trees by Tenant *par vie*, is a Forfeiture of the Remainder for Life.

What is a dispensation of a Forfeiture, or what acceptance or act shall purge a Forfeiture or not.

The admittance of an Heir of a Copy-holder by a *Dominus pro tempore*, is a dispensation with a precedent Forfeiture, 1 Keb. 26, *Muniface* and *Baker*.

Admission by the Lord dispenseth with a former Forfeiture, *Torbil* 107. *Clerk* and *Wentworth*. *Alister* had the Lord seized an Herriot.

And yet if the Father commits a Forfeiture and dyeth, and the Son is admitted as Heir by descent, this purgeth not the Forfeiture, because the Father dying seized of no Estate, the Son cannot be admitted to any, *Torbil*, p. 107.

If the Tenant be amerced, the amercement dispenseth with the Forfeiture, though the amercement be not estreated or levied, 1 Leon. 104. *Sir John Braunces's Case*.

If a man comes into a Copy-hold tortiously, and is admitted by the Lord, and afterwards he makes a Lease for three Lives, which is a Forfeiture, yet if he that hath the pure right to the Copy-hold, Release to the wrong doer before the Lord enters, that is good, for until the Lord enter he is Tenant in fact, 4 Rep.

Disseisor is admitted by the Lord, and he makes a Lease not warranted, a Release from the Disseisor purgeth.

15. 1 *Brownl.* 149. in *Odingsal* and *Jackson's Case, Quere.*

Acceptance.

Copy-holder sold Timber off the Land; Lord enters, Copy-holder dyes; Lord seises a Beast, the Heir brought Trespass: the Plaintiff justified the seizure for an Harriot, *Per Cur.* in Ejectment, this being the Defendants Evidence. Justification for Harriot Service or Seisin of Ancestor, is an acceptance of Heir as Tenant, and purgeth the Forfeiture; *contra* on Acceptance, Justification or Avowry for Harriot Custom; but now there being an actual Entry in the Life-time of the Ancestor by the Lord for the Forfeiture, no acceptance after will purge it, 3 *Keb.* 641. *Pascal* and *Wood.*

Repairs of waste.

If a Tenant permit Waste, and after repair, yet it seems this doth not purge the Forfeiture, *Lach.* 227. But *Moor, n.* 508. is *contra.* If a Copy-holder cut down Trees without a Custom, it is a Forfeiture, unless it be for Reparation. *Note,* The Repairing with Timber, though after five years cut, and after Action brought, is a dispensation of the Forfeiture.

Affirmance or confirmation by the Lord, Feoffment or Lease of the Freehold.

If a Copy-holder makes a Lease for years, which is a Forfeiture at common Law, and afterwards the Lord makes a Feoffment or a Lease for years, of the Freehold of this Copyhold to another, the Feoffee or Lessee shall not take advantage of it, for the Lease of the Freehold made by the Lord before Entry, is an assent that the Lessee of the Copy-holder shall continue his Estate, and so is in nature of an affirmance or a confirmation of the Lease, *Owen, p.* 63. *Pen* and *Merival.* So the difference is, when the Lord enters or not, and also whether the Forfeiture be committed before the Lords feoffment, &c. or after.

Whether Forfeitures in the time of the Ancestors of the Lord shall descend to the Heir.

Copy-holder doth waste, the Lord dyes, the waste is presented in the Court, and the Lords Heir enters, the better Opinion is, he cannot enter. *Per Dodderidge*, Actions ancestrel shall descend to the Heir, but not Forfeitures, which is in the Will of the Lord to take advantage or not, *Palmer's Rep.* 416. *Cornwallis* and *Hammond*, 18 *Eliz.* in *Harpers Rep.* cited by *Lach.* p. 227. in *Cornwallis's Case*. The Case was, Lord and two Co-partners, Copy-holders, the one makes a Feoffment, and the Lord makes a Lease of the Manor, the Lessee shall not take advantage of this Forfeiture, because he is not privy to the Title; but if the Lessor dyes, it was agreed the Heir should take advantage of it. *Ideo Quere.*

Where the Heir shall not take advantage of a Forfeiture.

Its a mischievous Case if the Lord should be suffered to rake up old Forfeitures, a long time past, and yet on the other side there is no reason that the Lords should be abridged of their Rights. And its adjudged 2 *Siderfin*, p. 8. *Chamberlain* and *Drake's Case*, That the succeeding Lord shall not take advantage of waste made in the time of the preceeding Lord.

Upon Entry for a Forfeiture, who shall have the Emblements.

Upon Entry by the Lord for a Forfeiture, he shall have the Emblements then growing, as if a Feme Copy-holder *durante viduitate*, sows the Land, and before severance takes a Husband, the Lord shall have the Emblements, for her own act is the cause of the determination

Lex Cusumaria: Or,

tion of the Estate: If such Woman let for years and the Lessee sows the Land, and after the Widow takes Husband, the Lessee shall not have the Emblements, for although his Estate is determined by the act of a Stranger, yet (as to the first Lessor) he shall not be in better case than his Lessor was, 5 Rep. Oland's Case, Vide Emblements.

The Lords Remedy for a Forfeiture.

For Forfeitures presented by the homage, the Lord may distrain or seize, 1 Keb. 287. Pateson and Danges.

By Entry, the Lord shall have the Emblements.

C A P. XXIII.

Of extinguishment of Copy-holds. How they are destroyed by the act of the Lord, or of the Copy-holder. Where and how a Right to a Copy-hold shall be Estopped, or Extinguished by Acceptance or Release. Where a Copy-hold shall be suspended, and where it may be regranted.

Where and by what acts a Copy-hold shall grow extinct and destroyed for ever, and where not, and to what purposes and to what not.

By the act of the $\left\{ \begin{array}{l} \text{Lord,} \\ \text{Copy-holder.} \end{array} \right.$

BY the act of the Lord. And here observe two Rules.

By the severance of the Inheritance of the Copy-hold from the Manor, the Copy-hold is not destroyed, for though the Copy-hold must be parcel of the Manor; yet severance made by the Lord shall not destroy the Estate of the Copy-holder, Custom has so fixt and established his Estate.

In all cases where the Copy-hold is gone by the Grant of the Reversion; it is not so gone but that the Tenant shall hold his Estate still, and subject to Forfeiture as before. To Illustrate this, I shall cite two or three Cases.

That

That the Lords act shall not prejudice the Copy-holders Estate.

Copy-hold extinct as to Services, but remains as to the Customary Estate.

If the Lord makes a Lease for an hundred years, the Lands are not so severed from the Manor, as that the Copy-hold is extinct, and the customary Interest is not determined, but the Lord himself hath destroyed the Custom as to the Services; for the Services reserved upon the Copy, and the advantage of waste, and other Forfeitures are extinct: But by *Ander-son*, the Rents and Services remain, and waste shall be a Forfeiture, though such waste cannot be found by an ordinary Presentment, and that the Lord shall have the Rents and Services, and not the Lessee; *quod mirum*, saith the Reporter, against his own Lease, 2 *Leon.* 208. *Beal* and *Langley*: But this point is well settled in *Murrel* and *Smith's* Case, 4 *Rep.* 25. though the Reversion of the Copy-hold be granted and so severed from the Manor, yet the Copy-holder shall hold his Estate, and subject to Forfeiture as before, and shall perform the same Services, (suit of Court excepted) as before, and the Custom incident to the Land, as Burrough English, Gavel-kind continue still; but Fine upon Alienations and Suit of Court and Admittances are gone.

Copy-hold though severed from the Manor, not destroyed by the Lords act.

The Lord Grants an ancient Copy-hold to *S.* in Fee, and after he grants the Inheritance of that Copy-hold to a Stranger in Fee. *S.* makes his Will, and deviseth it to *M.* in Fee, which was surrendred at next Court. *Per Cur.*
 1. By the severance of the Inheritance of the Copy-hold from the Manor, the Copy-hold is not destroyed, being the Lords act. 2. The Surrender after the Severance of the said Copy-hold

py-hold was void, and so was the Will, for the Lands were not parcel of the Manor at the time of the Surrender, and the devise only cannot transfer for such customary Estate.

3. After the severance the Copy-holder shall pay his Rent to the Feoffee, and other Services which are due without Admittance as Harriot, &c. But not Fine or Suit of Court; But such Forfeitures as were Forfeitures before the Severance, as Feoffment, Lease, Waste, are Forfeitures after, 4 Rep. 24, 25. After severance Forfeitures continue.

In *Lee and Boothby's Case*, Cro. Car. 521. The Question was, If a Copy-holder in Fee surrender to the Lord of the Manor his Copyhold Estate, and the Lord makes a Lease for years of the Manor, and of the said Copyhold, by the name of his Tenement called *H.* whether it was a determination of his Copyhold? *Per Curiam*, it is not, because when he lets the Manor, it is included as parcel of the Manor; the Manor being demised includeth the Copyhold as parcel of the Manor, and the naming of the Copyhold is surplusage: But if he (though he had been but *Dominus pro tempore*, or for half a year, though by parol) had made a Lease for years of the Copyhold by it self, that had destroyed the Copyhold, for it was then during that time severed from the Manor, and so could never after be demised by Copy.

Lease for years of a particular Copyhold by name, together with the Manor, by the King, hath not so extinguished that the Copyhold (though by the surrender of it, it is parcel of the Manor in the King) but that after such Lease the Patentee of the Reversion may regrant it as Copyhold, 1 Keb. 720:

But

Act of the Lord with consent of the Tenant, where it destroys it or not.

Copy hold Estate may remain to some purpose, notwithstanding the severance from the Freehold.

But the act of the Lord with consent and acceptance of the Tenant, will destroy the Copy-hold, otherwise it shall not prejudice the Copy-holder: But in some sense the Copy-holder may assent, and yet not be prejudiced, as in *Howard and Bartlet's Case*, *Hob.* 181. The Custom was, if Copy-holders for Life dye seized, their Wives shall have this during their Widowhood; and *A.* being Copy-holder for Life, the Lord conveys the Freehold and Inheritance of the Copy-hold of *A.* by the procurement of *A.* to *J. S.* a Stranger, and his Heirs, during the Life of *A.* Remainder to *B.* the Wife of *A.* for Life, Remainder to *A.* and after *A.* grants the Remainder to *W.* his Son; after this, *B.* the Wife of *A.* dyes, and *A.* marries *C.* and dyes seized; now though here appears the Copy-holders privity and consent, in that he takes the Remainder in Fee, and grants it over to his Son, that it should be destroyed, and though this Copy-hold Estate was destroyed before her marriage, yet the viduity of *C.* is not extinguished, for the Freehold being in *J. S.* during the Life of *A.* the Estate of *A.* was not so extinct, but the Custom shall continue *quoad* her. The Copy-hold Estate here remains, notwithstanding the severance from the Free-hold; and though the Remainder was in him, and he granted it over, yet he lived and dyed a Copy-holder; *Hobart*, p. 181. *Howard and Bartlet*, 1 *Rolls Abr.* 510. *Cro. Jac.* 573. the same Case by the name of *Waldoe and Bartlet*.

Copy-holder in Tayl accepts a Feoffment from the Lord, it destroys not the Copy-hold so as to conclude his Issue, *Carters Rep.* 6, 7.

2. By the act of the Copy-holder.

Acceptance of
a Lease.

If a Copy-holder accept a Lease for years of his Copy-hold, by this his Copy-hold is destroyed, whether it be immediately from the Lord, or mediately, as was *Lane's Case*, 2 Rep. 16. b. The King seized of a Manor in Fee grants Copy-hold Lands, parcel of this Manor, to another in Fee, by Copy of Court Roll, according to the Custom of the Manor: And after the King by his Letters Patents under the *Exchequer* Seal, makes a Lease for 21 years to another, of these Lands; the Lessee grants his Term to the Copy-holder; afterwards Queen *Elizabeth* (reciting the Lease for 21 years,) grants the Reversion in Fee; the 21 years expire, and the Patentee of the Reversion enters upon the Copy-holder; his Entry adjudged good; for, *Per Cur.* by the acceptance of the Term by the Copy-holder, the Copy-hold Estate was determined, as well as if the Copy-holder had immediately accepted a Lease for years of his Copy-hold; the reason is the same in both Cases. A Copy-hold Interest and an Estate for years of one and the same Land, may not stand together in one and the same person, at one time, without confounding the lesser, and if one of them ought to be determined, it ought to be the Copy-hold Estate. Also they are of divers natures, and so cannot stand together in the same person; the Estate at the Common-Law cannot drown, it being the more worthy than the customary Estate, and the customary must. *Vide mesme Case in Anderson* 1 Rep. 191. and 1 Leon. 170. So it was resolved in *Hide and Newport's Case*. A Copy-holder in Fee took a Lease for years, of the Manor, the Copy-hold is extinct for ever, and not only during the Lease, *Moor Rep. n. 330.*

The reason of
the Extin-
guishment.

Q

Copy-

Acceptance to
hold the Land
by Bill and
not by Copy.

Copy-holder accepts to hold his Land by Bill under the Lords Hand, and not by Copy, this determines the Copy-hold, 1 *Anderson* 199. *Coleman and Bedil.*

If a Copy-holder takes a Lease for years of the Manor, by this his Copy-hold is destroyed, 4 *Rep.* 21. *French's Case*: But such Lessee may re-grant the Copy-hold to whom he will, for the Land was always demised and demisable.

If the Lord make a Lease for Life to the Copy-holder by parol, this shall confound the Copy-hold, if Livery be made, otherwise not, *Litch.* 213.

If there be a Lease for years, of the Manor, and one of the Copy-holders doth purchase the Reversion in Fee, by this the Copy-hold is destroyed, and the Lessee of the Manor shall oust the Copy-holder, and hold the Land for the time, *Calib.* p. 97.

By the Tenants Release to the Lord.

By the Copy-
holders Re-
lease to the
Lord.

If a Copy-holder releaseth to his Lord, that extinguisheth his Copy-hold, although it be contrary to the nature of a Release to give possession, *Hutton*, p. 81.

Or to a Pur-
chaser.

The Lord sells the Freehold interest of a Copy-holder of Inheritance unto another, so as it is divided from the Manor, and afterwards the Copy-holder releaseth to the Purchaser, by it the Copy-hold Interest is extinct; but if the Lord be disseised, and the Copy-holder releaseth to the Disseisor, *Nil operatur*, 1 *Leon.* 102. *Wakeford's Case*, *Cro. Eliz.* 21.

For if a Copy-holder is ousted and so the Lord is disseised, and the Copy-holder releaseth all his right to the disseisor, and dyes, his
Heir

Heir Enters and brings an Action of Trespass against the disseisor, who pleads his Franktenement. *Per Cur.* the Release is void, the disseisor not being admitted Copy-holder.

It hath been a Question, when a Copyholder bargains and sells his Copy-hold to the Lord of a Manor, in Lease for years, whether the Copyhold Estate was extinguished. But in *Hutton*, p. 81. it is agreed that this Copy-hold is not extinguished; but that the Lord, who is Lessee for years, is *Dominus pro tempore*, and may grant it by Copy, *de novo*.

The Lord of a Manor demised Copy-hold Lands to three Sisters, *Habend.* to them for their Lives *successive*; the eldest Sister married one C. after which, the Lord by Indenture leased the same Land to the eldest Sister, the Remainder to the Husband, Remainder to the second Sister, and no Agreement was made thereunto by the second Sister by Deed, before or after making the said Indenture; but four days after the Lease made she agreed to it *in pais*, and then married a Husband, and they claim the Land. The point is, if by Agreement of the second Sister, her Right to the Copy-hold were extinct? The Interest of the eldest Sister is gone by her acceptance of the Estate by Indenture; now if the second Sister may come and claim her customary Interest? *Per Cur.* its no extinguishment in the second Sister; and yet Judgment was against her; for *Per Gaudy*, none can take advantage of the eldest Sister's Estate being determined; the Lord against his Lease cannot enter or claim; and the second Sister cannot enter during the Life of the eldest Sister, for her Remainder takes effect in possession after the death of her said

Agreement to an Indenture by one in Remainder for Life.

Sister, 1 Leon. p. 73. *Curtis and Cottell's Case*,
28 Eliz. Trin. B. R.

By acceptance of a new Estate of Free-hold.

Baron and Feme Copy-holders, to them and their Heirs; the Baron, in consideration of money paid by him to the Lord, obtaineth an Estate of the Freehold, to him and his Wife, and to the Heirs of their Bodies. Baron dieth, having Issue; the Feme enters and suffers a Recovery, and his Heir enters, *Per Statute 11 H. 7. Per Cur.* the Entry is lawful, for the Copy-hold by the Acceptance of the new Estate was extinguished, *Cro. El. 24. Stockbridge's Case.*

Where and how Right to a Copy-hold shall be Extinguished by Release.

A man makes a Surrender of his Copy-hold Land to *J. S.* which is not good; and after *J. S.* is admitted; he which made the Surrender releaseth to him being in possession, and after enters upon him. The Question was, if his Entry be congeable, and if by the Release by Deed, the customary Right of the Copy-holder was extinct? And *Per Cur.* it is extinct by the Release; for he to whom the Release was made, was Copy-holder in possession, and admitted to the Tenements, and therefore the Release of a customary right may enure to him, and the Lord hath no prejudice; for he hath received his Fine for Admittance; and he to whom the Release is made, is in by Title, (*viz.*) by Admittance of the Lord, and so this Release enures by way of extinguishment. And there is great difference between transferring of an Estate, and an extinguishment

tinguishment of a Right: But if a Copy-holder be ousted, *per Tort*, there his Release to the disseisor, or other wrong doer, does not transfer his Right or Bar him. 1. Because there is no customary Estate, upon which a Release of any customary Right may enure; and then 2. It would be a prejudice to the Lord, who would lose his Fines and Services, *Co. 4 Rep. 25. b. Kite and Queinton.*

Diversity between the transferring of an Estate, and the extinguishment of a Right.

In Replevin, bar to the Conifance, That *K.D.* was seized of the Manor of *R.* in Fee, and that the Tenements in which, &c. were customary held of the said Manor, and that at such a Court a Copy was granted to the Plaintiff, whereby he entred and put in his Beasts. The Defendant protesting the Premises were not customary; for Plea saith; That (before the Plaintiffs Title) *J.* Abbot of the Monastery of *B.* was seized of the Manor of *R.* &c. and one *R. T.* being seized of the customary Lands, in which, &c. in Fee, at the will of the Lord; the said *R.* surrendered to the Abbot, who was possessed and occupied the said Premises for divers years, and afterwards demised the said Manor for 49 years to *W. M.* and then surrendered the entire Manor and Abbathy to *H. 8.* who granted the entire Manor to the Duke of *Norfolk* in Fee, and he, with the assent of the Termor, made a Feoffment to *Drury* of the Manor, to whom the Termor surrendered his Lease; *Drury* dyes, and it descends to his Heir, who granted the Land, in which, &c. again by Copy to *Tillot*, for his Life, who entred and put in his Beasts. Demurrer. The Question was, if the Custom is destroyed, or if *Drury* the Defendant may avoid his Grant by Copy? Note, The customary Land was never severed from the Ma-

rior, but granted with the Manor, as part of it, and was demisable by Copy; by all the Lords of the Manor, and so it remained till the 15th of Eliz. when the Defendant granted the Copy to the Plaintiff, *Winch Ent.* 991, 992.

Where a Copy-hold shall be perpetually extinct, or where it shall after become a Copy-hold by re-grant.

Forfeited, Escheat.

If a Copy-hold Estate be forfeit or escheat to the Lord, or otherwise come into the Hands of the Lord, if the Lord make a Lease for years or for Life, or other Estate by Deed, or without Deed, this Land shall never after be granted again by Copy; for the Custom is destroyed, for that during such Estates the Land was not demised, nor demisable by Copy of Court Roll: So if the Lord make a Feoffment, and enter for the Condition broken, it shall never be granted again by Copy: But if the Lord keep it in his Hands a long time, or let this at Will, then he may re-grant it, *Lacb.* p. 213. 1 *Rolls Abr.* 498. *Downcliff and Minors.*

So if the interruption be tortious, as if the Lord be disseised, and the disseisor dye seized, or the Land be recovered against the Lord by false Verdict, or erroneous Judgment, yet after the Land recovered, or the judgment reversed, this is grantable again by Copy.

Legal Interruptions.

But if the Land so Forfeited or Escheated, before any new Grant be extended upon a Statute or Recognizance acknowledged by the Lord, or the Lords Wife hath this assigned to her in a Writ of Dower, though these are impediments by acts in Law, yet the interruptions

ruptions are lawful, and the Lands may never again be granted by Copy, 4 Rep. 31. *Frenches Case*.

If Copy-holder takes a Lease for years of the Manor, by this his Copy-hold is destroyed; but such Lessee may re-grant the Copy-hold again to whom he will, for the Land was always demised or demisable.

If a Copy-hold be surrendered to the Lessor of a Manor, or be Forfeited to him; he, his Executors or Assigns may well re-grant it to him again.

If a Copy-hold Escheat to the Lord, and he alien the Manor, by Fine, Feoffment, &c. his Alienee may re-grant this Land by Copy, for it was always demised or demisable; but if it be a particular Copy-hold Estate, otherwise, as was said in the beginning of this Case, 4 Rep. 31. *Frenches Case*.

If a Copy-holder sue Execution of a Statute against the Lord of a Manor, and had the Manor in Execution, and after the Debt is levied, the Interest of the Copy-hold remains, *Per Manwood, Heydon's Case, Savills Rep.*

Not destroyed by execution of the Manor at the Copy-holders Suit.

A Copy-holder in Fee marries a Woman, Seignioress of the Manor, and after they suffer a Common Recovery, which was to the Use of themselves for Life, Remainder over; by some the Copy-hold is extinct, for by the Recovery the Husband had gained an Estate of Freehold. But *Per Cur.* by the inter-marriage it was only suspended, *Cro. El. p. 7. Anonymus.*

Suspended:

If a Copy-holder accept of a Lease for years of the Manor, or marry the Lords Wife, by this the Copy-hold is not extinct, but suspended.

If a Copy-hold be granted to three for Lives, and the first of them take an Estate

Suspended.

by Deed, with livery from the Lord, by this the Copy-hold for that Life is suspended, *Dyer* 30. 4 Rep. 31.

No prejudice to the Wife, or to him in reversion.

Baron seized of a Manor in right of his Feme, let Copy-hold Land, parcel thereof, for years, by Indenture, and dyed; this doth not destroy the Custom as to the Wife, but that after the death of her Husband she may demise by Copy, as before: So

If Tenant *pur vie* of a Manor, let a Copy-hold, parcel of the Manor, for years, and dyes, it shall not destroy the Custom as to him in Reversion, *Cro. El. P. 38 Eliz. Conesby and Rusketb*; for being Tenant *pur vie*, he may not do wrong by destroying of Customs.

King H. 8. grants Lands, being parcel of Copy-hold of a Manor, without reciting this to be Copy-hold, to Sir J. G. *pur vie*, Sir J. G. *morust*. Queen Mary grants the Manor to Susan Tenny in Fee, who let the Manor for years to Lee. Lee, before his years expired, grants the Land in question to R. L. in Fee, according to the Custom of the Manor: Lee's years expire. R. L. let to Field at will, and the Defendant enters as Heir to Tenny. Judgment *pro Quer*. The Grant of the King is but a suspension and no destruction of the Custom: And though the Maxim is, *It ought to be demised and demisable*, &c. yet this holds not in the case of the King, 2 *Siderfin*, p. 142. *Vide contra*, 1 *Rolls Abr.* 498. *Downcliff and Minors*, *Vide sub Tit.* Grants by the Lord.

Suspension and not Destruction of Custom. Kings Prerogative.

Escheat.

As to the escheating of Copy-holds; after escheating it cannot properly be called a Copy-hold, except it be because there is power in him to re-grant it as Copy-hold. Were it by Custom that the Wife shall be endowed of the intierty or moiety, and such customary Copy-

Copy-hold Lands Escheat and the Husband dyes; The Wife not his Wife shall not be endowed of the intierry to be endowed after Escheat, or moiety, because the Custom as to her is extinct, 2 Siderfin 19.

A Copy-hold Escheated may be demised, notwithstanding the Lords Continuance of it, in his Hands above 20 years, 2 Keb. 213. Pemble and Stern.

Note, If the Copy-holder of a Manor hath had time out of memory, a Way over the Land of another Copy-holder, and he purchaseth the Inheritance of his Copy-hold, by which the Copy-hold is extinct, yet by this the Way is not extinct, 1 Rolls Abr. 933. Empson and Williamsen.

Copy-hold extinct, but not a Way over the Copy-hold Land.

C A P. XXIV.

How and where Copy-holder shall hold his Lands charged or not by the Lord, or Copy-holders, as Dowers, Rent-charges, Statutes: And how and where they shall be avoided.

THE Lord of a Manor (in which were Copy-holders for Lives) takes a Wife, and after a Copy-holder dyes; the Lord after Coverture grants the Lands again, according to the Custom of the Manor, for Lives, and dyes; the Lords Widow shall not avoid these Grants, in a Writ of Dower, yet the Custom, which is the Life of the Grant, was long before, 4 Rep. 24.

Dower of the Lords Wife.

If Feoffee of a Manor, upon Condition, make voluntary Grants of Copy-hold Estates, accor-

By Peoffee of
a Manor upon
condition.

Copy-holder
by voluntary
grant, not
subject to the
Lord's Char-
ges.

The Remain-
der preserves
the Estate
from Charges.

Rent charge.

according to Custom, and after the Condition is broken, and Peoffee re-enters, yet the Grants by Copy shall stand. *Earl of Arundel's Case*, cited in *Co. 4 Rep. 24*.

The Copy-holder which comes in by voluntary Grant shall not be subject to the Charges or Incumbrances of the Lord before the Grant, *8 Rep. 62. Swain's Case*.

Lord of a Manor (where the Custom was of Land demisable, for one, two or three Lives, that he that was first named in the Copy should enjoy it only for his Life, and so the second, &c.) grants it to *J. P. and E. and M.* his Daughters for their Lives; if the Lord had charged the Inheritance of the Copy-hold, *J. P.* shall not hold it charged during his Life, for the mean Estates in Remainder preserve the Estate of *J. P.* by Copy from the Incumbrances of the Lord; *9 Rep. 107. Margaret Podger's Case*.

Earl of W. seized of Manor by Copy, grants a Rent-charge to *Sir W. Cordel* for the term of his Life, and conveys the Manor to *Sir W. Clifton* in Tayl, the Rent is behind; *Sir W. Cordel* dyes, the Manor descends to *Sir John Clifton*, who grants a Copy-hold to *H.* The Executors of *Sir W. Cordel* distrain for the Rent: *Per Cur.* the Copy-holder shall hold the Land charged, *2 Leon. p. 152. and 109. Cordel and Clifton*. But it hath been adjudged, That the Wife of the Lord shall not be endowed against the Copy-holder; for the Title of Dower is not consummated before the death of the Husband, so as the Title of Copy-holder is completed before the Title of Dower; and in this Case the Seisin and possession continues in *Sir John Clifton*, who claims only by *Sir William Clifton*, who was

was the Tenant in Demeſn, who ought to pay the Rent.

Lord and Copy-holder for Life be; the Lord grants a Rent-charge out of the Manor, where-
of the Copy-hold is parcel; the Copy-holder surrenders to the Uſe of A. who is admitted accordingly, he ſhall not hold it charged; but if the Copy-holder dyeth, ſo that his Eſtate is determined, and the Lord granteth to a Stranger, *de novo*, to hold the ſaid Land by Copy; this new Tenant ſhall hold the Land charged, 1 Leon. p. 4.

Rent charge
by the Lord
upon the Ma-
nor.

Lord of a Manor (where Lands were demifable for one, two or three Lives,) in which Manor was a Cuſtom, that the Lord for the time being, might grant Copy-hold Eſtates for Life, in Reverſion; the Lord granted ſuch Lands for Life, by Copy in poſſeſſion, took a Wife, and granted the ſame Copy-hold to a Stranger, in Reverſion, for Life, and dyed, the Copy-holder in poſſeſſion dyed; this Land (*inter alia*) is aſſigned to the Wife for her Dower; the Copy-holder ſhall hold the Land diſcharged of the Dower, 1 Leon. p. 16. *Cham and Dover's Caſe*.

Dower.

In *Cham and Dover's Caſe*, is cited the Caſe of *Slowman*, who being Lord of a Manor (*ut ſupra*) by his Will deviſed, That his Executors ſhould grant Eſtates by Copy, and dyed, having a Wife; the Executors make Eſtates accordingly; the Wife in caſe of Dower ſhall avoid them, *Dyer* 344 and 1 Leon. p. 16.

Dower.

Lord of ſuch a Manor is bound by Recognizance, afterwards a Copy-holder for Life dyeth; the Lord granteth his Copy-hold *de novo*, the new Grantee ſhall hold the Land diſcharged of the Recognizance for the Copy-holder

Recognizance.

holder is in by the Custom, which was paramount, 1 *Leon.* p. 16.

Granted upon
an Escheat,
shall avoid
Charges.

The Lord of a Copy-hold Manor, where Copy-holders are for Life, grants a Rent-charge out of all the Manor; one Copy-hold Escheat; the Lord grants that again by Copy; the Grantee shall not hold it charged, because he comes in above the Grant, (*viz.*) by the Custom; the same Law of Statutes, Recognizances, Dower; and *Dyer* 270. is deemed for Law, in *Suain's Case*.

Copyholders
Beasts di-
strainable or
not for a Rent
charge.

If one is seized of Rent-charge by Prescription, issuing out of the Manor of *D.* yet it seems he may not distrain the Beasts of the Copy-holders of the Manor, unless they have been used to be distrained, for that they are in by Prescription also, and so as high as the owner of the Rent; but it is clear, That if the owner of the Rent had this by Grant or otherwise, and not by Prescription, that the Copy-holders Beasts cannot be distrained for this, 1 *Rolls Abr.* 669, 670. *Cannon and Turner*.

But by *Coke* Chief Justice. If a Copy-holder be of 20 Acres, and the Lord grants Rent out of those 20 Acres, in the Tenure or occupation of the said Copy-holder (and names him) there, if this Copy-hold Escheat, and be granted again, the Copy-holder shall hold it charged, for this is now charged by express words, *Brownl.* 208. *Sammer and Forge*.

St. rule by
the Lord.

Tenant by the Curtesie for Life or years of a Manor; a Copy-hold comes to his Hands by Forfeiture or Determination, and then he was bound in a Statute; and afterwards demised the Land again. *Per Cur.* this Copy-hold shall be lyable to the Statute, because it was once annexed to the Free-hold of the Lord, and bound in his Hands: But if a Copyholder

holder bind himself in a Statute, it shall not be extended, for he had not but an Estate at will, and this diversity was agreed, in *Moör, n.* Statute by the Copy holder. Diversity.

233. *Anonymus.*

Lord of a Manor being summoned upon a Jury, lose Issues, Process shall issue out of the *Exchequer* to levy them upon the Lands of the Copyholders, and Lessees for Life and years, parcel of the Manor; for the loss of Issues lies upon the Land as an inherent Servitude by the Law, into whose Hands soever it comes, and this is the common practice of the *Exchequer*. Process for Loss of Issues.

C A P. XXV.

Of Harriots. The Nature of Harriot Service and Harriot Custom, and of their Differences. What Custom for Harriots are good or not. Where they shall be apportioned, and by whose acts. Who shall pay Harriot or not. And the Pleadings.

Of Harriots.

HArriots being one of the ancient Services now most esteemed, and kept up, and many Copy-holds being Harriotable, I shall Treat of Harriots, chiefly intending Harriot Customs, and so far of Harriot Services, as to render the whole Intelligible.

The *Normans* upon parcelling out their Lands to inferior Tenants, invented this Service, and termed it Harriot Service; and afterwards

terwards upon Infranchisement of their Villains, Harriot Customs were given to the Lords for a future continued gratulation, and so originally they were *de gratia*, but now they are *de jure*.

It is the best Beast (or other thing) that the Tenant hath at the time of his death, and this shall be paid before a Mortuary; but the Lord if he will may seize the worst, and that seizure gives him property, *Hob. p. 60. 16 H. 7. 5. Co. Lit. 185. b.*

Harriots may be by Tenure, Custom, or Reservation, *Plowd. Com. Redsole and Mantel.*

There are two sorts of Harriots, $\left\{ \begin{array}{l} \text{Service,} \\ \text{Harriot} \quad \text{Custom.} \end{array} \right.$

And the nature of them both will be best explained by these diversities.

Harriot Service is generally exprest in a mans Grant or Deed, by which it is reserved, and is in these words, or to this effect, *ac etiam per servitium reddendi post mortem cujuslibet tenentis deceden. seisit. optimum animal. &c.* *1 Anderson 298, 299. Odiam and Smith*; But Harriot Custom is only due by Custom time out of mind, and may be paid after the death of Tenant for Life, *Terms del Ley.*

Harriot Service is extinct by Purchase of parcel, but not Harriot Custom, *Co. Lit. 149. b.*

It hath been made a question in our Books, whether the Lord may seize for Harriot Service, but it is agreed he must seize for Harriot Custom, *Plowd. 96. a.*

In the Case of *Woodland* against *Mantel*, it is said the Lord may seize for Harriot Service; but *Anderson* 1. p. 298, 299. in *Odiam* and *Smith's* Case saith, he ought to distrain, and not

not to seize; so is Serjeant *Benlows* p. 18, 39. But the Law is settled in *Cro. Car.* 260. *Mayor* versus *Brandwood*, and that it is at the Lords election either to seize it or distrain it if he can find it, though the pleading seem to justify it; for in *Replevin* if one justify for Harriot Custom, its no Plea for the Plaintiff to say, that the place where is *bors de son Fee*, for that he claims this Harriot as his proper Goods, and may seize it wherever he finds it, *Benl.* p. 18, 39. For the Lord may seize for an Harriot Custom in the High-way, 2 *Inst.* 132.

What Custom for Harriots shall be good or not.

Custom was, That if the best Beast be esloigned, then the Lord had used to seize and take the best Beast of any other being Levant and Couchant upon the Land; its a void and unreasonable Custom: So if it be the Goods of any Inhabitant or Dweller, *Dyer* 199. *b. Paxton's Case*, *Benl.* p. 39. *his. Co. Ent.* 666.

The Custom of having an Harriot, whether the man had Goods or not, is a void Custom, *Carter's Rep.* p. 86.

A Custom, That the Lord shall seize the Beasts of a Stranger for an Harriot, it is not good, because it alters the property; but a Custom, That he shall distrain the Goods in such Case, it is good, because it is as a Pledge, 2 *Lein.* p. 725. *Parker's Case*.

Where

Where Harriot shall be apportionable or not.

By the Act of the $\left\{ \begin{array}{l} \text{Lord.} \\ \text{Tenant.} \end{array} \right.$

Lord and Tenant by Fealty and Harriot Service, and the Lord purchaseth part of the Land, the Harriot Service is extinct, because it is intire valuable: *Aliter*, of Harriot Custom; for if the Custom of a Manor be, That upon the death of every Tenant of the Manor that dyes seized of any Land holden of the said Manor, the Lord shall have an Harriot, although the Lord purchase parcel of the Tenancy, yet the Lord shall have an Harriot by the Custom of the Manor for the residue, for he remains Tenant to the Lord, and the Custom extends to every Tenant, *Co. Lit.* 149. b. 6. *Rep.* 1. 2. *Bruerton's Case*, 8 *Rep.* 105. *Talbot's Case* 106.

Feme by Custom is to have a moiety by Survivor; and if Harriot be to be paid for the whole, if it be part surrendered, both shall pay Harriots, 1 *Keb.* 356. *Muniface and Baker*.

Act of the Tenant:

If Tenant alien parcel of the Tenancy, entire Services, as Homage Fealty, Harriot, &c. shall be multiplied, *Solida a singulis præstantur*.

If my Tenant who holds of me by an Harriot, aliens parcel of his Land to another, each of them is chargable to me with an Harriot, because it is entire; and though the Tenant purchase the Land back again, I shall have of him for every portion an Harriot, 6 *Rep.*

1. *Bruerton's*

1. *Bruerton's Case.* 8 Rep. 105. *Talbot's Case*, 34 Edw. 3. 1.

Copy-hold was held by Rent and Harriot upon Alienation and Surrender: Copy-holder aliens parts of his Copyhold to one, and part to another, and retains part in his Hands, and surrenders to the Use of the Alienees. *Per Cur.* the Lord shall have an Harriot upon every alienation, in case of a Copy-holder, as well as a Tenant at Common Law. If they should not be multiplied, it would be in the power of the Tenant to defraud the Lord by Alienation of parcels, and in this case the Alienor pays the Harriot, because he continues Tenant, and upon every Alienation after by the Alienees they shall pay it, *Palmer's Rep.* 342. *Sir Francis Snag against Fox*, 1 Keb. 357.

If a Copy-holder being sick in his Bed doth surrender into the Hands of two Tenants, &c. to the Use of his eldest Son in Fee, and dyeth before the Surrender is presented in Court, the Lord must have an Harriot: If Surrender had been presented in Court, and Admission before the Father's death: *Aliter*

If an Harriot is due to the Lord upon every descent only, and a Surrender is made by a Copy-holder unto the Use of his Heirs in full Court, and to his Heirs, and the eldest Son is admitted Tenant accordingly, and the Father dyeth, the Lord shall have no Harriot.

Who shall pay an Harriot and when or not.

Where many Purchase Land joyntly, an Harriot shall not be paid till after the death of the Survivor, 8 Rep. 105.

R

IF

If by Custom a Copy-holder dyes seized, he shall pay an Harriot to the Lord, and after the Copy-holder is disseised, and dyes during the disseisin, yet he shall pay an Harriot within this Custom, for he was Tenant in right, notwithstanding this disseisin, 2 *Rolls Abr.* 72. *Norris's Case.*

Lease is made to *A.* for 99 years, if *B. C.* and *D.* or any of them so long shall live, to commence after the determination of a former Lease, rendring Rent after the commencement of the term, *ac etiam post mortem B. C. & D. respective* for an Harriot 3 *l.* *B.* dyes before determination of the first term, and Lessor brings *det.* for 3 *l.* for an Harriot: *Per Cur.* no Harriot is due, because coupled with a Rent, and no Rent is due during the *interesse termini*, but both begin together, *Siderfin*, p. 437. *Hagon and Carve.*

Lease is made for 99 years, if *I.* and *S.* live so long, to commence after the determination of a former Lease to *Sibel*, if *Sibel* lived so long, *reddendo 40 s. per annum*, and 3 *l.* in the name of an Harriot, *post mortem* of each *Cestuy que vie.* *Per Cur.* the Harriot ought not to be paid till the Lease come in possession, which is not till *Sibel* dye, at which time the second Lease takes effect, and this shall follow the nature of the Rent, being in company with such Rents and Services as are to be only done when the Lease comes in possession; and the Lease to Lessee for 99 years, is but a future Interest, where the Lessor hath no Reversion, nor the Lessee any term, and *reddendo* is a reservation, and therefore cannot take effect till there is a Reversion; but *Keeling contra*, this being a sum in gross, and here is an expresse agreement to pay after the death of either of the Parties,
and

and agreements may reach payments as well on contingency, as where the Party hath Interest, 1 Keb. 677. *Lemal* against *Cara*.

Who shall have an Harriot.

A. is Copy-holder for Life, of Lands Harriotable by the Custom if he dye seized, and the Lord grants the Freehold of the Copy-hold to *B.* for 99 years, if *A.* the Copy-holder so long live; the Remainder to *A.* for 1000 years, and afterwards *A.* assigns over his Lease of 1000 years to *C.* and afterwards *A.* makes *F.* his Executor, and dyes seized, *Per. Cur. C.* the Assignee of 1000 years shall not have an Harriot, because at the time of the death of *A.* when the Harriot became due, he was not Lord, but had only a future Interest; and if any Harriot be to be paid, the Executor of *A.* or the Lord in Fee shall have it, *P. 15 Jac. B. R. Norris and Norris, 2 Rolls Abr. 72.* This Case in *March p. 23.* is Reported thus: The Lord granted the Seignior for 99 years, if the Tenant should so long live; and after he made a Lease for 4000 years: Tenant for Life is disfeized (or more properly ousted) and dyed: Two points resolved. 1. An Harriot was to be paid, notwithstanding the Tenant did not dye seized, because he had the Estate in right, and might have entred. 2. He in the remainder for years should not have it; their reason was, because the Tenant for Life was not the Tenant of him who had the future Interest of 4000 years, but of him who had the Interest for 99 years; but the Court was not agreed that the Grantee for 99 years should have the Harriot; the reason of the doubt was, because that *eo instante*, the Tenant died, *eodem instante*,

the Estate of the Grantee for 99 years determined.

A Bishop is seized of the Manor of *D.* and he lets twenty Acres of it to *A.* and *B.* during the lives of their three Children, rendering 21 *s.* Rent *per Annum*, and also paying and delivering to the Bishop and his Successors, two of the best Beasts upon the death of every Cesty *que vie*. The Bishop after lets all the Manor to *W.* rendering the ancient Rent; one of the Cesty *que vies* dies: The Question was, whether the Harriot belongs to the Bishop or to *W.* *Per Cur.* 1. The Rent issues out of the intire Manor. 2. That the Harriot reserved shall go with the Reversion, *Winch*, p. 46, 57. Bishop of Gloucester against Wood.

Pleadings.

What shall be a good Avowry or Conizance for an Harriot in Replevin, or a good Justification in Trespass or not, and how to be pleaded.

If the Lord avow generally for an Harriot, without shewing what the Harriot should be, whether. Beast or other thing, its sufficient, *Hobart*, p. 176. *Shaw and Taylor*.

Exception to an Avowry was, for that in it he sets forth, That if any Tenant dye seized, the Lord is to have an Harriot, and shews not of what Estate he should dye seized; for in one case it may be an Harriot Custom may be due, in another case, an Harriot Service: But *Per Curiam*, it shews he took them, *nomine Heriotorum*, which is good enough, 1 *Bulstr.* 101. *Sylliard's Case*.

Defendant

Defendant saith, That all the Tenants for Term of Life, &c. after their deaths have used to pay to him an Harriot; the Avowry is insufficient. That Tenants should pay after their deaths, its repugnant: But if he had said, That he and all those whose Estate he hath, &c. have had an Harriot, it had been good; this is Harriot Custom, for Harriot Service is of Tenants in Fee, 21 H. 7. 13, 15. 8 H. 7. 10.

Avowry by Harriot Service, he need not shew what was the Beast he demanded, nor the kind or price thereof, Cro. Car. 260. Mayor and Brandwood.

Bar to the Avowry, *nulla habuit Animalia*, *Quere Hobart* 176.

Avowry for three Oxen, *Separatim pro separatibus Harriot Cust. tunc.* 3 Br. 313, 333.

Prescription for Harriot *sur Alienation*, 8 H. 7. 10.

Avowry for Harriot Custom; *hors son Fee* is no Plea. *Vide supra*, Bend. p. 18. for Harriot Service, *hors son Fee* is a good Plea, Up. B. 110. Plowd. 96. a.

Avowry and Distress for Harriot Service, bar by Harriot Custom, Plowd. 94. Woodland and Mantel.

Bar for Harriot reserved upon a Demise, Tomps. f. 257.

Custom Pleaded, *Quod Dominus habeat Harriot Customar. post mortem cujuslibet tenentis*, Co. Entr. 39. 3 Brownl. 313, 403.

Simile & si fuerint elongat. tunc optimum animal. levan & cuban. super terras, Co. Ent. 666. Dier 199. Moor 16.

Traverse.

Traverse tenure by Services alledged, Co. Lit. 598, 599.

Traverse le seisin, *Quod Pater non fuit seistus*, Coke Ent. 613. Plowd. 94, 95.

Traverse le tenure protestando quod non fuit seistus, *pro placito dicit quod non tenet*, &c. 3 Brownl 329, 349, 313.

Traverse del Custome, 3 Brownl. 313.

Justification in Trespas.

Bar. quod Defend. Dom. manerij habuit Harriot *custom. de omnibus tenentibus alienan. sine Licentia*. Ra. Ent. 650. Up. B. 182.

Bar by Harriot Custom, *Post mortem tenentis*, Co. Ent. 39. The like after the death of Tenant *pur vie*, 3 Brownl. 402.

Repl. quoad 1 mes. hors son fee, quoad 2 Mes. *non est talis consuetudo*, Up. B. 222.

Harriot pleaded in Bar *al Trespas*, 1 Brown 383.

C. A. P. XXVI.

What Statutes extend to Copy-hold Lands, and within what Statutes Copy-hold Lands shall be contained by construction of Law without exprefs words, and what not.

HOW the Statute *De donis* extends to Co-^{west. 2. c. De}py-hold Lands or not, *Vide sub. Tit. Of donis.*
Copy-holds Intayled.

It is exprefly provided, That a Copy-holder ^{1 R. 3. c. 4.} having Copy-hold Land to the yearly value ^{Of Jurtes.} of 26 s. 6 d. above all Charges, may be impannelled upon a Jury, as well as he that hath 20 s. Free-hold. But now this is altered by latter Statutes.

Copy-hold Lands are within the words and ^{4 H. 7. c. 24.} intention of the Statute, ^{Of Fines and} 4 Hen. 7. 24. of ^{non-Claim.} Fines with Proclamations and five years non-claim, and shall be barred; as a Lessee for years and his Lessor shall be barred; so the Copy-holder and his Lord: But if a Copy-holder by assent and covin to bar the Lord ^{Covin.} of his Inheritance, makes a Feoffment and levies a Fine with Proclamations, such Fine shall not bar the Lord, no more than it shall the Lessor if it be levied by Lessee, for the reason in *Fermor's Case*, 3 Rep. f. 77.

If a Copy-holder for Life, or in Fee, be ousted and the Lord be disseised, and the Disseisor ^{Disseisin.} levy a Fine with Proclamations, and five years pass, as well the Lord as the Copy-holder is barred, and the Lord shall not in such case have five years after the death of Tenant *pur vie*; for the Lord may presently have remedy

by Action (*viz.* Affise, &c.) and recover the Land; and the Lord may without consent or commandment precedent, or assent subsequent, enter in the name of the Tenant by Copy, and his own Right, to save their particular Interests as his own Freehold and Inheritance; for the Lord is no Stranger, but is privy in Estate: But not if a Stranger who hath no Right enter, &c. 9 Rep. 105, 106. *Margaret Podgers Case.*

The Case was, A Copy-hold is granted to *A. B.* and *C.* for their Lives, successive; the Lord by Deed Inrolled, bargains the Copy-hold to *A.* in Fee, and levies a Fine to him with Proclamations. *A.* dies seized, this descends to *M.* his Son and Heir, who levies a Fine to Uses; after ten years *B.* enters; the Fine is no bar, for no Fine or Warranty shall bar any Estate in Possession, Reversion, or Remainder, which is not divested and put to a Right, and the Lords Bargain and Sale doth not divest the Estates of them in Remainder; for the Lord doth that which he may do by Law, and *A.* was in by force of the Statute of 27 H. 8. And an Act of Parliament shall do no wrong.

Fine, when it shall bar or not,

Bicknal and Tucker's Case, Trin. 9 Jac. Rot. 3648. was, Whether a Fine with five years will bind the Copy-holder in Remainder? There was a Copy-hold granted to three for Lives, to have and to hold successively; the first accepts a Bargain and Sale of the Freehold, by the Lord of the Manor, and then he levied a Fine, with Proclamations, and five years pass, Whether he in Remainder is barred or not? Those whose Estates are turned to Rights, either present or future, are meant by the Statute to be barred. If a Copy-holder for

Whether a Fine and non-Claim shall bar a Copy-holder in Remainder.

for years be put out of Possession, and a Fine levied, and no entry by him, he is barred by the Statute: By the Bargain and Sale he in Remainder is not put out of Possession. If a man makes a Lease to begin at *Easter* next, and before *Easter* a Fine is levied, and five years pass, this Fine will not bar, because at the levying of the Fine, he could not enter, for then his Right was future: If the Lease had been in possession, and the Lessee had never entred, he had been barred, 1 *Brownl.* 181. This Fine shall not be a bar to the Copy-hold Estate in Remainder for Life, for it is not turned to a right; the Estate is given by Custom, and is to have his beginning after the death of the first Tenant, and if the first Tenant commit Forfeiture, he in Remainder cannot enter; and by *Coke*, notwithstanding the acceptance of the Bargain and Sale, the first Copy-hold Estate for Life remains in *esse*, 2 *Br.* 153. *mesme Case.*

Custom that the Lord shall seize Copy-hold, after three Proclamations, and non-Claim by the Heir, shall not bind the Heir that is beyond the Sea, 8 *Rep.* Sir *Richard Lechford's Case.*

Statute 37 H. 8. Of *Dissolutions*, extends not to Copy-holds. A Copy-holders Estate is not within the Statute of Monasteries and Chantries, to be avoided by any of the Statutes. So by Statute 1 *Edw.* 6. *Cap.* 14. it is expressly provided, That upon the dissolution of Abbies and Monasteries, Copy-holds should continue as they did before the Statutes, and should fall into the Kings Hands. A Copy-holder dissolved by the Statute of *Edw.* 6. did between the Statute of 37 H. 8. and 1 *Edw.* 6. grant a Copy-hold Estate in Reversion; but the Statute

37 H. 8.
Of Monasteries.

tute 37 H. 8. extends not to them, 3 *Bulfr.* p. 15. *Long and Baker*, *Vide* 1 *Leon.* p. 4. *mesme* Case.

31 H. 8.
Ecclef. Leases.

Of making Leases of Copy-hold Lands, belonging to Religious Houses, for years, after Leases for Lives or Years in being, is within that Statute, 8 *Rep.* 7. *Heydon's Case*.

32 H. 8. Of
Conditions,
Entries, As-
signee.

Copy-hold is not within the Statute of Entries for Conditions broken. Surrendree of Reversion shall not enter for a Condition broken, its not within the Statute of Conditions, *Hob.* p. 177, 178. *Swinnerton and Miller*.

Copy-hold is not within the Statute of 32 H. 8. Entries for Conditions. Copy-holder by Licence makes a Lease for 60 Acres, rendering Rent, and condition of Re-entry: Copy-holder Surrenders to *J. S.* and he demands Rent, and enters for Non-payment. *J. S.* is not such an Assignee as the Statute intends, and Custom doth not trench to such collateral things: such Assignee being in only by Custom, is not privy to the Lease made by the first Copy-holder, nor in by him, but he may plead his Estate immediately under the Lord, *Tel.* 222. *Brasier's Case*. But Assignee of a Copy-hold is within the Statute to have Action of Covenant, 1 *Reb.* 356. *Baker's Case*. *Quare*, if of Debt, *Cro. Car.* 21. *Platt and Plummer*.

Arrears of
Rent.

Executors brought Action for Arrears of Rent of Copy-hold, of which Manor the Testator died seized, *Per Cur.* Action doth not lye for Arrears of Copy-hold Rents, but only of Rents of Free Land, and Statute 32 H. 8. extends not to them, *Telv.* 135. *Appleton and Doiley*, 1 *Brownl.* 102.

Tenant in Tayl of a Manor, wherein Copy-holds are demisable for Life, &c. for a certain Rent. Copy-holder for Life dyes, and the

the Lord demiseth it for 21 years, rendring the ancient Rent, &c. its good within the Statute 38 H. 8. for its not any prejudice to the Issue as to the Rent, *Noy*, p. 106. The Lord *Norris's Case*, *Vide infra hoc capite*.

If the Lord of a Copy-holder for Life, demisable by 10 s. Rent, leaseth it by Indenture to the Copy-holder and two others, for their Lives, rendring 10 s. Rent, by which it is within the Statute of 32 H. 8. and is not material though the Harriot be lost, because it is meerly casual, *Noy* p. 110. *Banks and Brown*, *Vide Mountjoy's Case*, 5 Rep. Et *supra*.

Copy-hold is within the Statute 32 H. 8. 9. Of Maintenance; for the Word is, *Any Right or Title*, 4 Rep. 26. a. *Vide infra hoc capite*.

Copy-hold is grantable for three Lives. *Dean and Chapter of London*, grant this to H. G. for the Lives of J. R. and M. reserving the ancient Rent, but no Harriot; the Rent was payable at four Quarters, and by this Lease its payable half yearly; yet this is not void by the Statute 13 El. Cap. 10. For the Occupant shall be punish'd for Waste, and the Harriot is not annual, nor depends on the Rent; and as to the Rent its the accustomed yearly Rent, but in *Mountjoy's* 5 Rep. (yearly) was wanting, 6 Rep. 37 *Dean and Chapter of Worcesters Case*.

Copy-holds are within all the Statutes of Bankrupts by exprefs words, *vide supra*.

A Copy-hold is not within the Statute of Limitations. Debt for the Fine of a Copy-holder is not within the Statute of Limitations, 2 Keb. 536. *Hodsdon and Harris. Vide*.

It is laid down for a Rule in *Rowden and Master's Case*, Cro. Car. 44. When an Act of Parliament altereth the Service, Custom, Tenure, and

38 H. 8.
Rents of
Leases in Tayl.

32 H. 8. Cap. 9.
Of mainte-
nance.

13 El. Cap. 10.

Statutes of
Bankrupts.
1 El. and Jas.

Statute of Li-
mitations.

Rules when
Acts of Par-
liament ex-
tend to Copy-
holds or not.

W. 2. Cap. 20.
Elegit.

27 H. 8. 10.
Stat. of Uses.

31 H. 8. and
32 H. 8. Of
Partition.

32 H. 8. Cap.
28. Leases by
Tenant in
Tail, or by
Husband of
the Wives
Land.

30 Gra. 444

and Interest of the Land, or other thing in prejudice of the Lord or Tenant, there the general words of such an Act shall not extend to Copy-holds. Therefore,

Statute *W. 2. Cap. 20.* which gives *Elegit*, extends not to Copy-hold Lands, because it would be prejudicial to the Lord, and a breach of the Custom, that any stranger should have Interest there, without admittance and allowance of the Lord.

Statute *27 H. 8. 10. of Uses*, toucheth not Copy-holds, because the transmutation of Possession, by the sole Operation of the Statute, without allowance of the Lord, would be to the Lords prejudice.

The Statute *31 H. 8. Cap. 1.* and *32 H. 8. Cap. 2.* whereby Joynt-tenants and Tenants in common are compellable to make Prohibition extend not to Copy-holds. And the

Statute *32 H. 8. Cap. 28.* Which confirms Leases for 21 years, made by Tenants in Tail, or by the Husband and Wife of the Wives Land, touch not Copy-holds; for that Statute warrants only such Leases of Lands which are grantable by Deed; such are not Copy-hold Lands, though by the Lords Licence they may be granted by Indenture, yet in their own nature they are only demisable by Copy.

So Statute *32 H. 8. Cap. 34.* And for the same reason which gives an Entry to the Grantee of a Reversion, upon the breach of a condition, by the particular Tenant, toucheth not Copy-hold.

In all Statutes made for the good of the Common-wealth, and wherein no prejudice accrues to the Lord or Tenants, by reason of the alteration of any Interest, Service, Tenure, or Custom of the Manor, there the general words

words of such acts of Parliament do extend to Copy-hold Lands, as

Statute of *Merton, Cap. 1.* which gives Damages to a Feme Covert upon a Recovery in a Writ of Dower, where the Baron dyed seized, extends to Copy-holds. And *Merton, Cap. 1. Of Damages for Recovery in Dower.*

Stat. *W. 2. C. 3.* And the three several branches of that Stat. the one which gives a *cui in vita*, upon a discontinuance made by the Husband. *W. 2. Cap. 3. Cui in vita.*

The second which gives the Receit to the Wife upon her Husbands refusal to defend the Wifes Title. *Receit.*

And the third which gives a *Quod ei de forceat* to particular Tenants, extends to Copy-holds, *Quod ei de forceat.*

And The Statute *32 H. 8. Cap. 9.* against Champerty and litigious Titles; which gives an Entry in lieu of a *Cui in vita*, extendeth to Copy-holds, *Cro. Car. 43. Rowden and Malsfer; Vide Plowd. f. 371.* *32 H. 8. cap. 9; Champerry.*

The Statute *W. 2.* which gives Elegits, extends not to Copy-holds, for that would be a prejudice, and the Common Law would break the Custom, *Sarvil's Reports, Heydon's Case, vide supra.* *Elegit.*

Copy-hold Lands are liable to the Statutes of Recusants, and the King shall have the profits of the Lands only, but no Estate; and such Statute doth not make a Tenant to the Lord, and though the King hath the Copy-hold Land, yet the Lord shall have the Rent during the possession of the King, *1 Leon. p. 98. Salicard and Everat's Case. Owen, p. 37. mesme Case.* *13 El. cap. 4. Of Recusants.*

Copy-hold Lands are not within the words of that Statute; but by *Anderson*, the Equity of that Act doth extend to Copy-holds, *1 Leon. 83. in Skipwith's Case.* *24 H. 8. 5. Of Wills.*

Copy-

31 *Eliz. cap. 7.*
Cottages.

Copy-hold is not within that Stat. 1 *Bulfr.*
50. *Brock's Case.*

11 *H. 7. cap. 10.*
Joyntresses,

Copy-hold Lands are assured to the Wife for
her Joynture, and she aliens them, its 'no For-
feiture within Statute 11 *H. 8. Cap. 10.*

Copy-hold Land is not within that Statute,
2 *Siderfin*, p. 41, 73. *Harrington and Smith.*

C A P. X X V I I.

*Of Emblements, who shall have them, the
Lord or the Copy-holder.*

A Woman who had her Widows Estate
of Copy-hold Land, and before sever-
ance took Husband, the Lord shall have the
Corn, because the Estate of the Woman de-
termined by her own act; otherwise if her
Estate had ended by Death, Divorce, Deter-
mination of the Will, &c. *Moor, n. 512. Oland*
and Burdwick, 5 Rep. 115. mesme Case.

If a Copy-holder *Durante viduitate* Lease for
one year, and the Lessee sows the Land, and
after the Copy-holder takes an Husband, yet
the Lessee shall have the Corn, for her act shall
not prejudice a third person, *Ibid. Oland's Case.*

If the Husband seized of a Copy-hold in Fee,
sows the Land, and after surrenders to the Use
of his Wife, who is admitted accordingly; and
after the Husband dyes before severance, it
seems the Wife shall have the Corn, and not
the Executors or Administrators of the Hus-
band, for that the Husband passed the Em-
blements with the Land to the Wife as annex-
ed to the Land, and by this the Priviledge
which

Annexed to
the Land.

which the Law gives to him who sows it, is taken away by the Surrender, and so it is all one as if the Wife had sowed it, or purchased the Land sowed by a Stranger, 1 *Rolls Abr.* 727.

C A P. XXVIII.

What shall be said a Disseisin as to Copy-hold Estates or not.

IF a Copy-holder in Fee dyeth seized, and the Lord admit a Stranger to the Land, who entreth; he is but a Tenant at will, and not a Disseisor to the Copy-holder, who hath the Land by Discent, because he cometh in by the Assent of the Lord, 3 *Leon.* 210.

If a Copy-holder without Licence makes a Lease for years, the Lessee who enters by colour of that, is a Disseisor, and a Disseisor cannot maintain an *Ejectione Firmæ*, 2. *Brownl.* p. 40. *Petty and Evans.*

If a Copy-holder Lease for years, by License of the Lord, and after enters upon the Lessee and ousts him; this is a Disseisin to the Lord of the Frank-Tenement, 1 *Rolls Abr.* 662. by *Coke, Vide sparsim.*

CAP. XXIX.

Actions and Suits. What Action may be brought by the Lords. What Actions brought by Copy-holders or their Executors, in respect to their Copy-hold Estates, shall be good or not, either against their Lords or others.

What Actions may be brought by the Lords.

THE Lord upon seizure of Copy-holder may maintain Ejectment till the Heir comes to be admitted (as in *Harverights Case*, *Latch* 511.) upon Entry of the Feoffor (upon Rent reserved and Entry till satisfaction) he may upon such Interest *quousque*, maintain an Ejectment, 1 *Keb.* 287. *Lord Salisbury's Case*.

As to the Lords Action for Rent, Distress Remedy for Forfeitures, *Vide supra* & *sparsim*, per tout, & in *Indice*.

What Actions a Copy-holder may bring against his Lord and what not.

Trespas upon
Ejectment by
the Lord.

Copy-holder doing and paying the Customs and Services; if he be ejected by his Lord, he shall have an Action of Trespas against him, *Co. Lit.* 60. b. 61. a. 4 *Rep.* 22. a. For though he is *Tenens ad voluntatem Domini*, yet it is *Secundum consuetudinem Manerij*.

For cutting
Trees.

He shall have Trespas against his Lord, for cutting of Trees, or breaking his House; in the Case of *Stebbing* and *Gosnel*, 1 *Rolls Abr.* 108.

The

The Custom was, That every Copy-holder in Fee shall have the Loppings of the Pollingers. The Lord cuts down two Oaks, and in his Plea to an Action *sur Case*, saith, he cut down two Oakes being Pollinger Timber Trees, and left the Loppings there for the Plaintiff. On Demurrer it was adjudged for the Plaintiff; for a Copy-holder of Inheritance hath interest in the Loppings and Boughs, as well as the Lord in the Timber. And if the Lord shall cut down all the Timber Trees, than the Copy-holder shall lose the Profit, *Cro. El. p. 629. Moor, n. 727. mesme Case, 1 Rolls Rep. Ford and Hoskin's Case.*

Nay the Action of Trespass by a Copy-holder in Fee against his Lord. for cutting down the Trees, lyes at Common Law, without any special Custom, for the Copy-holder hath a special property therein, and the Lord a general property; the Lord may as well subvert the Houses, as cut down the Trees, for without them the Copy-holder hath no means to Repair it, *2 Brownl. 328. Heydon and Smith, and in Doyle's Case, Mich. 25. and 26 El. it was adjudged, where it was a Custom that the Copy-holder might cut Maremium to Repair, if the Lord carry it away, an Action of Trespass lyes against him by the Tenant, in Taylor's Case, Pasch. 36. Eliz.*

A man was Tenant by Copy of Court Roll of Wood, and the Soyl was excepted to the Lord, and yet the Copy-holder maintained an Action of Trespass against the Lord for cutting his Wood, *Moor, n. 480.*

If a Stranger cut a Tree, the Lord shall have one Action and the Copy-holder another, and each one shall recover Damages according to his Interest. *Vide Leon. 1. 272.*

S

Copy-

Trespass by the Lord and the Copy-holder for cutting down Trees.

Copy-holder dyes, Lord admits a Stranger, the Heir may enter, and upon a re-entry, maintain Trespass without Admittance, *Noy, p. 172. Simpson and Gillion. Vide Admittance.*

For non-Admittance, no Action by Surrendree.

Action on the Case against the Lord, lyes not for non-Admittance.

A Copy-holder in the Eye of the Law, is but Tenant at the Lords Will; and if the Lord will not hold Court, he hath no remedy to compel him but by order in *Chancery, Cro. Jac. p. 368. Ford and Hoskins*: No Action on the Case by a named Successor.

By Surrendror.

Surrendror may have an Action on the Case for not admitting, but not the Surrendree, *2 Keb. 357. Quare.*

Remedy in *faux* Judgment.

The Demandant in a Pleint in nature of a real Action, recovereth the Land erroneously, with remedy for the party grieved; for he cannot have the Kings Writ of *faux* Judgment, in respect of the baseness of the Estate and Tenure, being in the Eye of the Law but a Tenant at Will, and the Freehold being in another; yet he shall have Petition to the Lord, in nature of a Writ of *faux* Judgment, and therein assign Errors, and have remedy according to Law, *Co. Lit. 60.* And if there be cause, the Judgment may be reversed.

Affise.

Tenant by Copy shall not have Affise against his Lord (as Tenant in ancient Demesne shall have) because he hath no Frank-Tenement, *4 Rep. 21.* but he shall be relieved in Equity, *Torbil, p. 108.*

The Copy-holders Actions and Remedies against Strangers, and where.

A man grants all the Coals and Coal-Mines within a Manor (and parcel was Copy-hold for Life)

Life) to J. S. Lessee enters into the Copy- Where Copy- holder shall hold and digs a new Pit in the Copy-hold have Trover Land, during the Life of the Copy-holder, and for Coals, dig- takes the Coals and converts them, &c. And ged out of his Lessee of the Coal-Mine brought Trover against Copy-hold the Lessor; *Per Curiam*, he may do it, for when Land. the Lessor or Lessee of the Coals, or a Stran- ger enters and digs the Coals out of the Pits, these belong to the Lessee, and if any one else take the Coals, he shall have Trover, *Jones Rep. 243. Player and Roberts.*

Lessee of a Copy-holder for a year, shall main- Ejectment tain an *Ejectione Firmæ*, for in as much as his Term is warranted by Law, by force of the general Custom of the Realm, it is but reason if he be ejected, that he shall have *Ejectione Firmæ*; and it is a speedy course for a Copy-holder to have the possession of the Land against a Stranger, 4 *Rep. 26.*

As to the Declaration in Ejectment, *Vide Tit. Declaration.*

In *Cro. El. p. 224.* It is said to be adjudged, Ejectment, *Per tot. Cur.* That an *Ejectione Firmæ* doth not lye of a Copy-hold Estate: But it was agreed, That an *Ejectione Firmæ* doth lye of a Lease made by a Copy-holder, but not of a Demise made by the Lord of a Copy-hold, by Copy of Court Roll, *Cole and Wall's Case.*

A Copy-holder had Licence from his Lord to let his Land for 21 years; he lets it to the Plaintiff for three years, who entred, and being Ejected, brought *Ejectione Firmæ*. *Per Cur.* he Ejectment Lessee upon a Lease, not warranted good against a Stranger, may maintain this Action at Common Law, for it is a good Lease between the Parties, and against all others but the Lord; and as this Case is, it is good against him, because it is done by his Licence, and it is a good Lease

and well warranted by the Licence, *Cro. El.* 535. *Goodwin and Longburst.*

A Copy-holder made a Lease for one year excepting one day, which was warranted by the Custom. Lessee being ousted by a Stranger, brings *Ejectione Firme*, it well lyes; and if there were not any Custom, yet it shall be good against all but him who had the Inheritance and Freehold. So if a Lessee for Will at the Common Law had made a Lease for years; for the Tenant at Will is only a Disseisor, and the Lease is good against him, *Cro. Trin.* 41 *El.* p. 676. *Spark's Case.* So 717. *Erish's Case, Moor, n. 709. Stoner and Gibson.*

Ejection by the Heir, without Admittance to presentment,

If customary Lands do descend to the younger Son by Custom, and he enters and leaseeth to another, who takes the Profits, and after is Ejected; he shall have an *Ejectione Firme*, without any Admittance of his Lessor, or Presentment that he is Heir, 1 *Leon. p.* 100. *Rummy and Eves, n. 128.*

If a Copy-holder had Common by Prescription in the Waste of the Lord, and the Lord stores the Waste with Conies, every Copy-holder may have Action on the Case against the Lord, averring, That by this the Common is impaired, 1 *Rolls Abr.* 106. *Clayton and Sir Jerom Horsey.*

Trespas for Beasts depasturing his Common by every Commoner.

Copy-holder prescribes to have Common in the Waste of the Lord, and brings Trespas on the Case against a Stranger, for his Beasts depasturing on the Common there. The Question was, whether this Action lyes? for 15 *H. 7.* 12. its agreed, a Commoner cannot maintain an Action of Trespas, nor no other, but the Owner of the Soyl, 12 *H. 8.* 2. And the Commoner hath no right till he hath taken it by the mouth of his Beasts, and the Damage is to

to the Tenant of the Land, and then every other Commoner may have Action of Trespass, and so the Stranger shall be infinitely punishable. *Per Coke*, If a Commoner may distrain Damage feasant (doing Damage) which proves he hath wrong; then by the same reason, if the Beasts are gone before his coming, he may have Action on the Case; otherwise, one that hath many Beasts may destroy the Common in a night: And its not like a Nuisance, for that is Publick, and may be punished in a Leet: But the other is private to the Commoners, and cannot be punished in another course; he cited one *Whiteband's Case*. Many Copy-holders prescribe to have the Loppings and Toppings of Pollards; the Lord cuts them; every Copy-holder may have his Action, and also *Hill. 5. Jac. Rot. 1427. Geo. England's Case*, and *Warburton* of the same Opinion, 2 *Brownl. p. 146. Crogate and Morris*.

If a Copy-holder by the Custom of a Manor had used to have Common for all his Beasts, Levant and Couchant upon his customary Tenements, in a certain parcel of the Manor, and a Stranger digs Turffs there, and takes them away, by which his Common, is impaired, Action on the Case lyes, declaring, That the Defendant digged so many Turffs there, and then with his Horses and Carts, *Herbam tunc & ibid crescen' predict. ambulando & conculcando*, from the place aforesaid, *minus rite ceperit & abcarriavit, per quod quer' communiam suam predict. pro averiis suis, &c. in tam amplo & beneficiis modo prout & antea habuit, &c. habere non potuit*. This is a good Declaration, though the Commoner cannot have any Damage for the taking and carrying away the Turffs; yet the coming on the Land with Horse and Carts,

Action on the Case for digging Turffs on the Common.

Declaration.

is a prejudice to the Common, and the *per quod*, the Common is impaired, is the cause of Action, and the carrying away a means to impair it, 1 *Rolls Abr.* 89. *Terry and Goodier*, and good, tho' Damages were entire.

Action shall be brought in a Copy-holder Lunaticks name; for though the custody of the Land was granted to one by the Lord, yet no Interest was gained by this commitment, and the Lord hath not power over the Lunaticks Lands, without a Custom, *Hobart*, p. 215, 216. *Cox and Darson*.

Trespafs, *Quare clausum fregit*.

Copy-holder of Under-Wood without the Soil, shall have Trespafs, *Quare clausum fregit*, *Moor*, n. 480.

Account for Profits.

Account lies not for an Heir Copy-holder for the Profits of his Copy-hold Lands, taken during his non-Age, where the Defendant hath not entred and taken the Profits, as *Prochein Amy*, but claims by Custom and Grant of the Lord, to the Use of the Assignee (which Custom is good,) 1 *Leon*. p. 226. n. 356. *Anonymous*.

Faux Judgment.

Writ of faux Judgment lies not for a Copy-holder, *Vide supra*.

Writ of Right Close.

Writ of Right Close, lies not for a Copy-holder, 4 *Rep.* 21.

Avowry for Rent by Lessee of a Copy-holder.

Lessee for years of a Manor, distrains a Copy-holder for Rent; he Replevins, Lessee Avows, *Per Curiam*, Avowry may be made for the Rent of a Copy-holder in the Kings-Bench; and there is difference between an *Ejectione Firme* and this Case. For the *Ejectione Firme* is brought for the Copy-hold it self: But this Avowry is for Rent due to the Lord, which is a duty at the Common Law, and therefore an Avowry may well be for it, *Cro. El.* p. 524. *Laugbter and Humphry*.

A Copy-holder in Fee, by Licence, made a **Covenant by Lease** for 21 years by Indenture, rendring Rent, **Assignee of a Reversion.** wherein the Lessee Covenants for himself, his Executors and Assigns, That he will erect a, &c. The Lessor surrendered to the Use of the Plaintiff and his Heirs, who was admitted accordingly; and the Plaintiff, as Assignee, brings his Action of Covenant. Whether the Assignee may maintain this Action by the Common Law, or by the Statute 32 H. 8. Cap. 34. was the Question? for the Defendant demurred upon the Declaration; it was adjourned in *Cra. Car. 24. Plat and Plummer.* But it seems by 1 *Keb. 356. Baker and Berisford's Case*, That the Assignee is not within this Statute to have a Covenant.

Action of Debt doth not lye for Arrearages of Copy Rents; for the Stat. of 32 H. 8. does not extend to them, but to Rents out of Free Land, *Yelv. p. 135. Appleton and Doily.* And so Executors shall not have Debt for Arrearages of such Rents due in the Life-time of the Testator.

The Lord of a Manor is, and Fines for Admittances and Copy-hold Rents are Arrear, and then he sells the Manor; he is without Remedy, both in Law and Equity: He hath deprived himself of the Remedy by his own act, viz. the vendition, 1 *Rolls Abr. 374. Serjeant Hitcham and Finch.* **No Remedy for Fines, Rents, &c. after vendition.**

Copy-holder for Life becomes Lunatick. **A. Action of Trover** to be brought in the Lunaticks name, he being a Copy-holder. **fows the Land.** The Lord grants the custody of the Lunatick to B. A. takes the Corn to the Use of the Lunatick. B. Brought Trover in his own name; its ill brought. It ought to be brought in the Lunaticks name, and not in the name of the Committee, *Noy, p. 27. Cox and Dawson.*

Covenant by
Rent.

Joinder in
Action.

Custom is, when a Copy-holder dies seized of Copy-hold Lands or Rent, That his Wife shall have the one moiety, and his Issues the other moiety. *A. B.* so seized, takes *Mary* to Wife, and they have Issue *John*. *A. B.* dies, so that *Mary* is seized of the moiety for her Life, and *John* of the other moiety in Fee, and of the first moiety as his Reversion. *Mary* and *John* her Son make a Lease to *J. B.* for twenty one years, rendring fifty pounds Rent to *Mary*, and fifty pounds to *John*; and after the death of *Mary*, one hundred pounds to *John*. *John* marries *Margaret*, they have Issue three Sons. *John* dies, so that a fourth part comes to his Wife, and the other fourth part to his three Sons. Rent is behind. *Margaret* brought Debt on Covenant for the Rent, *Per Curiam*, it was well brought by her sole, without joyning *Mary* with her. Tenant in Common shall joyn in Action so long as the privity of Contract remains, but when the privity is determined, as it is here, they may sever, and such Contract shall ensue the nature of the Land; and also there is a vesting by Custom, and expresse several Reservations, 2 *Siderfin*, p. 9. *Baker and Berisford*.

C A P. XXX.

Of Copy-holders being Impleaded and Impleadable in the Lords Court. Vide supra, Tit. Customs.

Copy-hold Lands are as the Demefns of the Manor, and are the Lords Freehold, and therefore are not impleadable, but in the Lords Court. *Croke Jac. 559. Pymmock and Hilder.*

One recovered certain Copyhold Lands in the Court of the Lord of the Manor, by Plaint, in the nature of a Writ of Right. A Precept cannot be made and awarded out of the Court, to execute the said Recovery, and to put him who recovered into possession, with the *Poffe* *Poffe Manrij.* *Manerij*; for force in such cases is not justifiable, but by command out of the Kings Courts, *3 Leon. 99.*

A Woman recovered Dower of a Copyhold within the Manor, and 40 l. Damages, and she brought Debt for the Damages, in *B. R. Per Cur.* it lyes not, because the Court Baron cannot hold Plea, nor award Execution of 40 l. Damages, though the Damages were there well assessed; and because no Writ of Error, or *Faux* Judgment lyes upon such a Recovery of a Copy-hold, but only a Petition to the Lord of a Manor; so that Copyhold Plaints are not within the Jurisdiction of this Court of Kings-Bench, *Moor, n. 559. Shaw and Tompson.*

40 l. Damages recovered, yet no Execurion or remedy, but by Petition.

If an erroneous Judgment be given in a Copy-hold Court of a common Lord, in an Action in nature of a *Formedon*, a Bill may be exhibited

Faux Judgment, how relieved.

exhibited in *Chancery*, in nature of a *Faux* Judgment, to reverse this, *Pateshall's Case* in *Scaccario*, 1 *Rolls Abr.* 373. and *Co. on Lit.* p. 60. a. He cannot have the Kings Writ of false Judgment in respect of the baseness of the Estate and Tenure, being in the Eye of the Law but a Tnant at Will, and the Freehold being in another: But he may have a Petition to the Lord, in the nature of a *Faux* Judgment, and therein assign Errors, and have Remedy according to Law, 4 *Rep.* 21. *Brown's Case*.

Fenner said he had seen a Record 26 *H.* 8. where the Lord by Petition to him, had for certain Errors in the Proceedings, reversed such Judgment given in his own Court.

Now real Pleints are in the Lords Court, are in this Form,

A. de B. queritur versus C. de D. de placito terræ, videlicet de uno Messuagio quadraginta Acris terræ, &c. cum pertin. & fecit protestationem sequi querelam istam in natura Brevis Domini Regis Assisæ mortis Antecessoris ad communem Legem (vel Brevis Domini Regis Assisæ novæ disseisinæ ad communem Legem) aut in natura Brevis de forma donationis in discendere ad communem Legem, (and so in the nature of any other Writ, &c.) plerii de prosequendo, F. G. &c.

C A P. XXXI.

Declaration of, for and concerning Copyhold Lands and Presidents.

IN *Ejectione Firme*, it was doubted by the Court, whether the Plaintiff in his Declaration ought to set forth the Custom of the Manor, That the Copy-holder may Lease, &c. and then to shew that the Lease is warranted by the Custom, in 1 *Anderson Rep. Ewer and Astwick*. But it is fully resolved and agreed in *Rumney and Eves's Case*, 1 *Leon p. 100*. That the Plaintiff ought not to shew that the Lease is warranted by the Custom, but that shall come of the other side. This was *Pasch. 30 El. B. R.* But in *Hill. 38 El. Cro. p. 469. Wells and Partridge*, it was doubted; because otherwise being a general Court, it shall be intended of a Lease at Common Law, which a Copyholder cannot make; as if the Heir in Burrough English brings a Mordancestor, he ought to shew the Custom in his Count, and declare according thereunto: This was the Opinion of *Anderson* in the Case; and in *Moor, n. 927. Gregory and Harrison*. It is said to be resolved an *Ejectione Firme* doth not lye of a Copyhold, if the Plaintiff doth not declare the Custom, Lease and Ejectment; but the Practice now is otherwise.

Whether in Ejectment the Plaintiff need to shew that the Lease was warranted by the Custom.

Upon Agreement, Whereas *W.* was seized of Copyhold Lands, That he should surrender the same to the Use of *Elkin*, and that he was to give him for the same 560 *l.* and if he sold the same over, the Plaintiff to have the moiety of what he sold over and above: It is said in the

Declaration must be, That he is seized in *Dom. suam ut de feodo secundum, &c.* and also may shew that they are customary Lands.

the Declaration, he was seized in *Dominico ut de feodo secundum consuetudinem manerij*, and he doth not shew the same was customary Land *Per Cur.* he ought to shew it, but he need not shew that he was admitted, 3 *Bulfr.* 230. *Elkins and Wastel.*

Declaration *sur Assumpsit* to make a Surrender of Copy-hold Land, *Placita gen. & spec. p.* 16.

Declaration in Case for a Copy-holder for cutting down Trees upon his customary Tenements, *Brownl.* 252.

Def. seiscitus de terris customar' vendidit querent statum suum inde ac omnia bona & assumpsit causare statum fieri quer' in terris & deliberare bona, *Rast. Ent.* 7.

Par' pro tenend' customar' versus Dord' Maner' qui succidit arbores sup' Tenementa customar' per quod quer' non habet sufficiens forale sepiment & maremium pro reparatione secundum consuetud' Manerij, *Hern* 216, or 226. 1 *Brown* 252.

Pro ten' customar' versus un' Tanner de Tanpits erect. prope rivulum decurrend' ad Pelsuagium querentis per quod aqua corrumpitur, *HeM* 254.

Ad exheredand' quer' de Tenementis customar' & impediend' ipsum de Administratione bonor' ei committend', *Co. Entr.* 29.

Pro ten' customar' molendini versus occupationem tenementorum quod per consuet' debet molare grana ad dict' molend', *Hern* 83.

Parat in Action sur Case per Copyhold que fuit le Tenant pur 3 vies successive des terres d'un Manoir deins quel fuit un Cusume habere successive, &c. & un autre Cusume que prima persona in copits rotulorum ejusdem Manerij nominata poet surrender in manus Dord' al son proper use & al use des deux autres nominand' Le Def. in consideratione quod le Plaintiff pro 12 d. in manibus

manibus & 50 quarter de byasss illi deliberand assumpfit sursum reddere ad usum ipsius & duor alior ex nominatione Def. & procurare cur assumpfit & promissit apparere apud Curiam & accipere statum ad usum ipsius & 2 aliorum & deliberare les 50 quart byassii p̄es, Winch. Ent. 65.

Parrať per Cōpyhold qui fuit Tenant pur 3 vies successive des terres tenus d'un Panoz, deins quel fuit un Cusume habere successive, &c. & un autre Cusume que prima persona in Coplis rotulorum ejudem manerij nominat poer surrender in manus Dorn al son proper use & al use deux autres per ipsum nominand le Def. in consideratione que pro 12d. in manibus & 50 quarters de Palt a luy deliberand ad assume a Surrender al use de luy mesme & 2 autres nominatione Def. & procurare curiam assumpfit & promissit d'appareer al Court & d'accepter del Estate a luy & les deux autres & pur deliber les 50 quarters de Pelt vendit, Winch Entr. p. 65. Chambers and Turner.

Cons del oblig a Surrender un Cōpyhold Estate al use delquer al piochein Court, Bar quod Def. al Court tenus tiel jour surrendroit accor dant al effect del condicoñ, Winch. Entr. 241, 222. & demur general al bar, Eldre & Ll'uel-ling.

CAP. XXXII.

Of Pleadings. The general Rules of Pleading as to Copy-hold Estates. Of Pleading, Customs and Prescriptions, and the different Forms. Pleading in reference to Common, and when to be pleaded by way of Custom, or by way of Prescription. The manner of Pleading when a Lease is to be answered which is set forth in the Avowry. Where in Pleading the Commencement of the Estate must be shewn, and by whom granted, or not. How a Licence must be pleaded by the Lessee. Prescription for Copy-holders to be discharged of Tythes. How to be pleaded. Of Traverses, when and where to be taken. Forms of Pleading of Surrenders, Admittances. Forms of Pleading Estates in Fee Tayl for Lives or Years. Pleading of Presentments, Grants. Pleadings in respect of Commons, Trees, Ways, Inclosures, Forfeiture, and all other Pleadings necessary for the Copy-holder to set forth his Title or to defend it.

Pleadings.

General Rules of Pleading as to Copy-hold Estates.

EVERY Admittance of an Heir upon a Descent, amounts in Law to a Grant, and after Admittance the Heir may in Pleading
alledge

alledge this as a Grant; and this the Law allows for avoiding an inconvenience which will otherwise happen; for if the Copy-holder in Pleading shall be put to shew the full Grant, either it was before the time of memory, and then it is not pleadable, or within time of memory, and then the Custom fails; and for this cause the Law hath allowed the Copy-holder in Pleading to alledge any Admittance upon a Descent or upon a Surrender as a Grant, and yet he may if he will, alledge the Admittance of his Ancestor as a Grant, and shew the Descent to himself, and that he entred, and good without any Admittance of him; but the Heir cannot plead, That his Father was seized in Fee at the Will of the Lord, by Copy of Court Roll of such a Manor, according to the Custom of the Manor, and that he died seized and that it descended to him, for in truth such an Interest is but a particular Interest at Will, in judgment of Law, although it is descendible by the Custom; for he is Tenant at Will of the Lord, according to the Custom of the Manor, 4 Rep. 22. *Brown's Case*.

If one Surrender to the intent that the Lord shall grant it to another, and he admits him, it was adjudged good; yet he ought to plead it as a Grant, *Lit. Rep.* 175.

Tenant in Dower may Grant a Copy-hold in Reversion, which shall be good, though not executed, in the Life of Tenant in Dower. But then it must be pleaded as a Grant in Reversion, and not as a Grant in Possession; therefore in *Gray's Case*, *Cro. El.* p. 661, 662. It was there pleaded, That he granted *Tenementa prædicta per nomen* of a Messuage which *A. P.* held for Life; and *Per Cur.* its an incurable

How a Copy-holder shall plead in making Title to a Copy-hold.

Admittance pleaded as a Grant.

Grant of Copy-hold Land in Reversion must be pleaded as a Grant in Reversion and not as a Grant in possession, nor by *a per nomen*.

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ble Fault, for it is not alledged that he granted the Tenement in Reversion: and the *per men* will not help.

Averment del' vic.

Tenant by curtesie of Copy-hold, brings Ejectment or Action, it must appear that he is in Life, or else he cannot have Judgment, 1 *Anderson*, p. 292. *Ewer* and *Astwick*.

Where in Pleading the Commencement of the Estate must be shewn, or by whom granted, or not.

In matter of Conveyance to a Title, need not shew the Conveyance.

Replevin, the Plaintiff in bar to the Avowry shews that the Land was Copy-hold Land, grantable in possession or reversion for Life or in Fee, and that the Lord granted the Reversion to him after the death of *W.* who was Tenant *pur vie*, and shews the death of *W.* whereby he entred. And demurred, because he did not shew the beginning of *W.* his Estate, nor by whom *W.* had the Estate granted him. *Per. Cur.* this is no cause of Demurrer, because it is not the Plaintiffs Title, but matter of Conveyance thereunto, *Cro. Jac.* 52. *Lodge* and *Fry*.

Admittance of the last Heir to be shewed Instead of an ancient Grant.

If one pleads Seisin of a Copy-holder in Fee, and claims under him; he ought to shew of whose Grant, as he ought to shew of any other particular Estate; but perhaps that is so ancient that it cannot be shewn who was the first Grantee, yet it was held sufficient to shew the Admittance of the last Heir, which is in nature of a Grant, and may be pleaded by way of Grant, *Cro. Jac.* 103. *Pyffer* and *Hembling*.

In Trespass the Defendant justifies he confesseth the Close to be Copy-hold Land, but pleads, That longtime before it was parcel of the Manor of, &c. and that long before the supposed

supposed Trespass, one Pole and M. his Wife was Lord of the Manor in right of his Wife for Life, remainder to Stephen in Tayl, and he made a Lease of this Land to the Defendant; its an ill Plea, because the Defendant hath not shewed (as he ought) how Pole and his Wife came to this Estate for Life, the remainder over; they ought to shew how this particular Estate hath its commencement, they claiming a derivative Estate from Pole and his Wife for years, 3 Bulstr. 281. Sandford and Stephens.

None may entitle himself to any Copy-hold but he ought to shew a Grant thereof. In Trespass the Plaintiff in his Rejoynder intitles himself, because the place where is customary Land, parcel of such a Manor, whereof J. S. is seized in Fee, and demisable by Copy at Will in Fee; and that J. N. was seized in Fee, by Copy, &c. and dyed seized, so as it descended to two Daughters, as Heirs of J. N. and that at such a Court *Dominus concessit eis extra manus suas, &c. Habend. & tenend. Tenementa predicta*, to the said Daughters and their Heirs, whereby they were seized in Fee, and afterwards demised to the Plaintiff for years. The Plaintiff hath not made a good Title; and he shewing such an one was seized in Fee, without shewing the Grant thereof, *Per Cur.* its not good, *Cro. Car.* 190. *Shepherd's Case*; yet it was but default of form, and Issue, for the Plaintiff being found, it is a Jeofail.

Pleading Custom or Prescription.

A Copy-holder in Pleading need not alledge a Custom to make a Surrender, for that is the Custom of all England.

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A Copy-holder need not alledge a Custom to make a Lease for a year.

It must be pleaded that he used to do it.

It is not sufficient to alledge a Custom that one might do such an Act, but that he used to do it; as to alledge *dimissibile* and *dimissum*; therefore in *Brown and Foster's Case*, the Defendant avows in Replevin for Damage feasant; the Plaintiff makes Title as Copy-holder, and shews, that within the Manor of *A.* time whereof, &c. *Talis habebatur & habetur consuetudo*, &c. That any Copy-holder may surrender into the Hands of two Customary Tenants, &c. this is not well pleaded; for it is pleaded by Usage and Custom, but he doth not plead that ever it was put in ure in that manner, which ought to be alledged, as in *Sir William Hatton's Case*, where it was pleaded, *Quod Talis habebatur consuetudo* within a Manor, *Quod licebit Seneschalli* to impose a Fine, &c. But in the principal Case, the not naming the Steward made the Avowry ill; and then *Per Cur.* the Avowry being ill, although the bar to the Avowry were ill, yet he cannot have return, *Cro. p. 37. Et. 39.* *Brown and Foster.*

Not naming the Steward in the Avowry ill.

Copy-holder pleads, *Quod infra Manerium præd. talis habetur, nec non a toto tempore cujus contrarij memoria hominum non existit habebatur consuetudo videl. quod quilibet tenens customar' prædicti tenementa*, &c. hath used to have Common in such a place, parcel of the Manor. Question was, if the Custom may be alledged within the Manor, and applied but to a single Copy-holder. *Per Cur.* such Custom, as well for the form as the matter, is good; for a Copy-holder cannot prescribe in his own name for the exility of his Estate; but he ought to prescribe in the Lords name, when he claims Common, &c. out of the Land of a Stranger; but if he claim such

Prescribe for Common in one Copy-holder.

such profit in the Manor, he must lay it by way of Custom, for then he cannot prescribe in the Lords Name, for the Lord cannot prescribe to have Common in his own Soil, and one Copy-holder may have such Common, &c. It may have a lawful commencement, and all the other Copyholds may be extinct, 4 Rep. 31, 32. *Foyston's Case*, vide for Prescription *devant*.

In Trespass, the Defendant justifies as Copyholder for Common, he saith these are customary Lands, but doth not say, *ad voluntatem Dom.* which is uncertain whether Tenant-right Lands or Barrough-English, or Free-hold: Judgment *Pro Quer.* 3 Keb. 368. *Walker and Wilson*.

Customs must be pursued in Pleadings.

A man cannot plead a Prescription against a Prescription, but he ought to answer the Prescription alledged in the Count, when two Customs repugne, *Cro. Car.* 432. *Spooner and Day's Case*, *Carter's Rep.* 88.

Custom alledged to be, That if any Copyholder seized of customary Lands of the said Copyhold, die seized thereof, having many Sons, that the youngest shall Inherit; and the Defendant in Replevin, makes his Title, That a customary Estate was granted to the Father and Mother, and the Heirs of the Father, and the Mother survived. This Estate is not within the Letter of the Custom, *Per Walmsly*, and cited *Sir John Savage's Case*, *Quod vide supra*, *sub Tit.* Custom, 2 Leon. 208. *Beal and Langly*.

A particular Tenant at Will may not prescribe in his sole Tenancy, but when the Prescription and the Custom runs half through the Manor, he may well lay it by Custom, *Kelway* 76, 77. *Tropnet's Case*.

Prescription by a particular Tenant at Will.

Tenant may
plead a Cu-
stom to enjoy
without inter-
ruption of the
Lord.

When it must
be pleaded by
way of Cu-
stom, and
when by way
of Prescrip-
tion.
Rule.

Copy-holder may plead a Custom, That every Tenant, after he hath paid the Lord his Fine, may enjoy his Lands and Tenements, granted by Copy, during their Estates, Terms, or Interests, without interruption or expulsion of the Lord, for the time being, they performing their Services, and doing nothing that may Forfeir, *Kelloway* 76, 77. *Ann Tropnet's Case*.

Vide supra.

When the Copy-holder claims any thing by Prescription in the Soil of another; in Pleading he ought to prescribe in the name of the Lord; but if he claim any thing in the Soil of the Lord, within the Manor, then he shall plead the Custom of the Manor, for there he cannot plead in the name of the Lord, in as much as the Lord cannot prescribe in his own Soil, *Foyston's Case*, and 4 *Rep.* 31. *Cooper's Case*, 6 *Rep.* 60. *Gateward's Case*.

There is nothing more common, than for the Lord to prescribe for his Tenants by Copy, in another mans Land; whereas if it be in his own it shall ever be laid *per Custom*, *Hob.* p. 28, 61.

Of Pleading a Custom for Common by Prescription.

Defendant pleads in Trespass, That there are divers Freehold Tenements, time out of mind, in the said Manor, &c. and that there were and are, *infra eand.* villan divers. customary Tenements, parcel of the said Manor, grantable *ad voluntatem Dom.* by Copy, That all the Tenants of the Free Tenements, time out of mind *Habuerunt & usi fuerunt*, and all the Tenants of the customary Tenements, *per consuetudinem ejusdem manerij in eodem manerio a toto tempore supra dict. usitat. & approbat. habuerunt & habere consueverunt solam & separalem pasturam, &c.* for all their

their Cattel (Hogs, Sheep, and Steers excepted) Levant and Couchant upon their respective Messuages and Tenements every year for all times of the year, except, &c. as belonging and appertaining to their several Tenements, and that at the time of the Trespass the Defendant put in his own Cattel, Levant and Couchant, upon this said Messuage, *prout ei bene licuit*, &c. Exceptions to this Pleading, were, 1. That he was seised *de Antiquo Messuagio*, and of no Land, is not proper, for in common intention Cattel cannot be said to be Levant upon a Messuage only. 2. He saith he put in his own Levant and Couchant, but avers not as he ought, That none of them were *Porci, Oves*, or *Steers*. 3. The Plea doth not set forth the Custom of the Manor, but implicitly, That the Freehold and customary Tenants have had and enjoyed *Per Consuetudinem Manerij solam & separalem Pasturam* for all their Cattel, which is a double Plea, both of the Custom of the Manor, and of the claim by reason of the Custom, which ought to be several, and the Court shall judge, and not the Jury, whether the claim be according to the Custom alledged; the Custom may be different from the Claim, *Per Consuetudinem Manerij*, if particularly alledged, *Vaughan's Rep.* 253. *North* and *Cole*.

In Replevin, Defendant makes Conuzance, as Bayliff to, &c. Damage Fesant. In bar of this Cognizance the Plaintiff pleads, That *H.* Earl of *H.* was seized of the Manor of *A.* whereof one Messuage, &c. is parcel, and demisable by Copy, and that within the said Manor there is this Custom, That every customary Tenant of the said Messuage, &c. have used to have Pasture, &c. in the said place called

The Form
how to apply
the Custom of
a Manor to a
particular
Messuage in
pleading.

Land-Mead, and so derives his Title by Grant by Copy: the Issue was upon the Traverse, *Ab-sque hoc quod infra manerium præd. talis habetur consuetudo quod quilibet tenens custumarius, &c.* have used to have Common, &c. prout, &c. Here is no Custom alledged, because it did not appear in Pleading, That the place where the taking was supposed to be, was within the said Manor, and no Custom of the Manor can extend out of the Manor, but he ought to prescribe in the Manor. Note, he ought to have pleaded, That the place in which, &c. was parcel of the Manor, and then the Plea had been good, *Hob. p. 286. I Brownl. 172. Roberts and Tonny.*

Plaintiff in Replevin rejoins by Custom of all the Copyholders of *Blackacre*, in the Manor of *D.* used to have Common in *A.* to which the Avowant demurred, because he should have prescribed in the Lords name, *A.* being out of the Manor; but the truth being that *A.* was anciently parcel, and lately severed by the Lord, this destroys not the Common, *Per Cur.* But the Copy-holder ought to prescribe specially, That *Talis consuetudo fuit*, till such a day, and that after the Lord granted over, &c. as on change of a Corporation in *Lutterell's Case.* *I Keeble 651. Davy and Watts.*

Special Pre-
scription in
Case of seve-
rance.

Common ap-
pendant.

The Case was, The King was seized of a Manor, where there were divers Copy-holders for Life, and was also seized of 8 Acres of Land in another Manor, in which the Copy-holders have used, time out of mind, &c. to have Common; and after the King grants the Manor to one, and the 8 Acres to another; and a Copy-holder puts in his Beasts into the 8 Acres: And in Trespass brought against him by the Patentee of the 8 Acres, he prescribes, That the Lord of the Manor, and all those

those whose Estates he hath in the Manor ; have used, time out of mind, &c. for themselves and their Copy-holders, to have Common in the said Acres of Land. And he farther pleads, That he was Copy-holder for Life by Grant (after the said unity of possession in the King) and so demanded Judgment *si actio*. Against which the unity of possession was pleaded: The Defendant demurs: *Per Cur.* as this Prescription was pleaded the Common was extinct; but by special pleading he might have been helped, and save his Common, for this was Common appendant, 2 *Brownl.* 47. *Vide James and Read, Tittings Case, 4 Rep.* 38.

Custom was alledged, That all the customary Tenements, *Habuerunt & habuere consueverunt. separalem pasturam, &c.* it was excepted to this Plea, That the Copy-holders have not shewed what Estate they have in their customary Tenements. And 2dly. Its not alledged that they have *solam pasturam* for their Beasts Levant and Couchant: *Per Cur.* its not material, for be their Estates what they will, in Fee, or Life, or Years, Custom hath annexed this sole feeding as a profit appender to their Estates; and this they claim by the Custom of the Manor, and not by Prescription. As to the other Exception, True it is, if one claim only Common appurtenant to his Land, he ought to say for his Beasts Levant and Couchant; for in such case he claims but part of the Herbage, and the residue the Lord is to have; and therefore if he put in any Beasts that are not Levant and Couchant, he doth a wrong to his Lord, and the Lord shall have Trespass: But here the Commoners claim all the Herbage, and so exclude the Lord totally, and so its no mischief to the Lord, 2 *Sanders* 326, 327. *Hoskins and Robins.*

Sola & separalis pastura.

Estovers.

If a Copy-holder for Life had used to have Common in the Waste of the Lord, or certain Estovers in his Wood, and the Lord alien the Waste and the Wood to a Stranger; and after grants certain Copy-hold Lands and Houses for Lives, such Grantees shall have Common and Estovers in the Lands and Woods which were aliened, notwithstanding the Severance: But after such severance, the Copy-holder shall not plead generally, *Quod infra manerium præd. talis habetur consuetudo*, for after such severance, the Waste or Wood is not parcel of the Manor, but he may plead, That before and until such time of the severance, *Talis habebatur & a toto tempore, &c. consuetudo, &c.* and then shew the severance, as in *Murrel's Case*, where the Lord severs the Freehold and Inheritance from the Copy-hold, *Co. 8 Rep. Swain's Case*.

Where a Copy-holder prescribes for Estovers in the Soil of another, and he saith, That all Copy-holders *Ejusdem tenementi usi sunt, &c.* where he ought to have said *Ejusdem manerij, &c.* This Prescription was adjudged void, *21 Ed. 4. 36. b. 63. b.*

Prescription *Pro ligno combustibili*, is good, *2 Brownl. 330.*

Trees.

A Prescription for a Copy-holder to cut Boughs of Trees, is well laid by way of a Custom, *2 Brownl. 329.*

The manner of Pleading when a Lease is to be answered; which is set forth in the Arowry.

In Replevin *B.* avowed for Damage feasant, and sets forth, That the Lady *J.* was seized of such a Manor, whereof the place where, &c. and leased the same to the Defendant for years, &c. The Plaintiff saith, That long time before,
King

King H. 8. was seized of the said Manor, and that the place where, &c. is parcel of the said Manor, demised and demisable by Copy, &c. and that the said King, by such an one his Steward, demised and granted the said parcel unto the Ancestor of the Plaintiff, whose Heir he is by Copy in Fee; and upon this there was a Demurrer, because by that bar to the Avowry the Lease set forth in the Avowry is not answered; for the Plaintiff in bar to the Avowry ought to have concluded, And so he was seized by the Custom, until the Avowant *pre-textu* of the said Term for years entred: And so it was adjudged, 1 Leon. p. 81. *Herring and Badcock.*

In Ejectment the Defendant pleads, That the Lessor of the Plaintiff was Copy-holder in Fee of that Land, parcel of the Manor of H. which is in the Queens possession, by reason of a Ward, and that the Lessor surrendered to the Use of the Defendant in Fee, who was admitted, and that afterwards the Lessor entred upon him, and expelled him, and let to the Plaintiff, *pro-ut* in the Declaration, and the Defendant re-entred, as he lawfully might. The Plaintiff demurs; *Per Cur.* the Plea is naught, for there is no confession and avoydance of the Lease let by the Plaintiff; for the Action is brought as of a Lease of Land at Common Law, and this proves, that the Land was Copy-hold Land, and a Copy-holder cannot make a Lease for years, unless by Custom or by Licence of the Lord, which ought specially to be shewed, *Cro. El.* 728. *Kensley and Richardson.*

Ejectment.

Lease as at Common Law, and plead Lease of Copy-hold Land, Custom or Licence must specially be shewed.

In *Ejectione Firmæ* brought by the Lessee of a Copy-holder, it is sufficient that the Count be general, without any mention of the Licence, and if the Defendant plead not Guilty, then

Lessee pleading a Licence, how.

then the Plaintiff ought to shew the Licence in Evidence; but if the Defendant plead specially, then the Plaintiff ought to plead the Licence certainly in his Replication, and the time and place when it was made: And if the Plaintiff replies, That the Copy-holder by Licence first then had of the Lord, did demise, and did not shew what Estate the Lord had, nor the place and time when it was made, its not good, *Per tot. Cur.* For the Licence is traversable; for if the Copy-holder without Licence make a Lease for years, the Lessee which enters by colour of that is a disseisor, and a disseisor cannot maintain an *Ejectione Firme*; and the Defendant cannot plead, That the Plaintiff by Licence did not demise, for this is a negative pregnant; also it ought to appear what Estate the Lord had, for he cannot Lease for a longer time than he had in the Seigniori; as suppose he is only for Life, and he licenseth for 21 years, and dies, its determined, 2 *Brownl.* 40. *Petty and Evans.*

Pleading a
Surrender,
how.

In Ejectionment, The Defendant pleaded a Surrender of a Copy-hold by the Hand of F. then Steward of the Manor; Issue was joyned *absque hoc*, that he was Steward. *Per tot. Cur.* its no Issue; for the Traverse ought to be general, that he did not surrender, for if he were not Steward, the Surrender is void: So of a Surrender pleaded into the Hands of the Tenants of the Manor, *Cro. El.* p. 260. *Wood and Butts.*

Pleads Prescription to be discharged of Tythes.

Copy-holders of Inheritance, who held of a Bishop as of his Manor, may prescribe, That the Bishop and his Predecessors, seized of the said Manor, for themselves, their Tenants for
Lives,

Lives, Years, and Tenants by Copy of Court Roll of the said Manor, time out of memory, &c. have been discharged from payment of Tythes for their Lands, parcel of the said Manor; for this is a good Prescription, for their Tenements are parcel of the Demesns of the Manor and this may commence upon a real composition of all the Manor, i *Rolls Abr.* 652.

The Case was thus,

A Parson sues a Copy-holder in the Spiritual Court for Tythes arising upon the Copy-hold Land; he brought his Prohibition, and suggests that the Bishop of *Winchester*, Lord of the Manor, whereof his Copy-hold is parcel, and his Predecessors, &c. time out of memory, &c. for them, their Tenants and Farmers, have been discharged of Tythes arising upon the Manor; and shews that he had been Copy-holder of the said Manor, time out of memory, &c. and prescribes in his Lord the Bishop of *Winchester's* Name (the Spiritual Court would not allow this Plea) but *Per Cur.* a Prohibition was granted although here be a Prescription upon a Prescription, one in the Copy-holder to make his Estate good, the other in the Bishop to make his Discharge good, yet it was allowed; for all Copy-holds are derived out of the Manor; and it shall be intended, That this Prescription had its commencement at such time when all was in the Lords Hands, and the one Prescription is not contrariant to the other, although both were from time whereof, &c. Prescription in the Lord ought of necessity to precede the Prescription in the Estate of the Copy-hold, and the discharge of Tythes in the Lord (which may well be in this case, because he is a Spiritual person) trenches to the benefit of the Tenant, who is a Copy-holder; for by this

Prescription upon a Prescription.

this means it may be presumed that the Lord had greater Fines and Rents, *Yelv. 2. Cromber and Fryar*, which case is more largely Reported by *Cro. El. 784*. Otherwise a Copy-holder which is a Temporal person cannot prescribe *in non decimando*.

Union.

Prohibition granted out of *B. C.* against the Ordinary of *G.* and one *Branch*; the surmise was, That the Land out of which the Tythes were demanded, is Copy-hold, parcel of a Manor, of which a Prior was seized in Fee, and was also Parson imparsoned, by which Union the Tythes were extinct. *Per Cur.* the surmise is not good, and a Consultation was awarded; it was no good Prescription to discharge the Tythes, *Moor Rep. n. 356. Branches Case*.

Uncertain.

A Prohibition prayed, upon a surmise that the Dean and Chapter of *C.* seized of the Manor and Rectory of *M.* and one *G.* a customary Tenant prescribes, That every Tenant of his Tenement hath used to pay 3 s. 4 d. to the Lord, who is also a Parson, in discharge of his Rent and a fourth part of the Tythe of *B.* *Per Cur.* its no good Prescription, for the Parson cannot libel for the Rent, nor the Lord for the Tythe, and *non constat* what each should have, and the Parson must have a satisfaction, or else there can be no discharge, *1 Keb. 886, 906. Wilkinson and Richardson*.

Traverses.

Traversing the day of the Grant.

In Ejectment, The Defendant entitles himself by Copy, granted 44 *Eliz.* The Plaintiff by Replication intitles himself by Grant, 1 *June*, 43 *Eliz.* The Defendant maintains his bar, and traverseth *absque hoc*, that the Queen 1 *June*, 43 *regni*

43 *regni sui*, granted the Land by Copy, *modo & forma prout, &c.* This Replication is not good, for the day and year of granting the Copy is not material, but only whether it were granted before the Copy made to the Defendant; therefore he ought to have traversed *absque hoc*, That the Queen granted *modo & forma prout, &c.* and this is matter of substance, and not aided; the traversing of the day where it ought not, is matter of substance, for thereby he makes it parcel of the Issue, which ought not to be, *Cro. Jac. 202. Lane and Alexander, 1 Brownl. 140. mesme Case.*

In Ejectment, The Defendant pleads the Land is Copy-hold, parcel of the Manor of *S.* whereof the King was and is seised, who by his Steward granted the same such a day to him in Fee, *Habend. &c.* by vertue whereof he was admitted, entred and was seised, and so justifies. The Plaintiff replies, That long before the King had any thing in the Manor, Queen *Elizabeth* was seised in Fee, *in Jure Corone*, who by her Steward at such a Court, granted the Land in question by Copy, to him in Fee, *Habend. &c. secundum consuet. &c.* who was admitted and entred; *Per Cur.* the Replication is good, and the Plaintiff need not Traverse the Grant alledged in the Bar, by the Defendant; for the Plaintiff hath confessed and avoided the Defendants Title by a former Copy granted by Queen *Elizabeth*, and so need not traverse, and as no man can have a Lease for years without assignment, no more can a man have a Copy without a Grant made in Court, *Cro. Jac. p. 299. Rice and Harrison, 1 Brownl. p. 147. mesme Case.* The Plaintiffs Réplication is good without any Traverse, for how can the Defendant have this, when as the Plaintiff had

Confessing and
avoyding.

had it before, as by his Replication appears; for that his Lease being first in time, avoids the Defendants Lease, being the latter; and therefore the Defendant in this case, ought to have rejoined, and so to have traversed the first Lease; but by his Demurrer to the Replication, he hath confessed the Lease under which the Plaintiff claims; *mesme Case 2 Bulstrode, p. 1. 6 Rep. Helliar's Case.*

Traversing
the dying sei-
zed.

Difference
between that
and at Com-
mon Law.

A man pleads a descent of a Copy-hold in Fee; the Defendant to take away the descent, pleaded, That the Ancestor did Surrender to the Use of another, *absque hoc*, That the Copyholder died seized. *Per Cur.* the Traverse is ill, because that he traversed that which needed not to be traversed; for being Copy-hold, and having pleaded a Surrender of it, the Party cannot have it again, if not by Surrender: But if a man plead a descent of Inheritance at Common Law, there the Defendant may plead a Feoffment made by the Ancestor, *absque hoc*, that he died seized, because he may have an Estate by disseisin after the Feoffment. Traverse of the descent and not of the dying seized, is not good, *March, p. 21. Anonymous.*

Coparceners.

Copy-hold Land was granted by the Lord of a Manor, 10 May, 3 Car. to the Wife of *Tho. Kett*; and in the Replication the Defendant justifies as Bayliff to *Tho. Kett*; the Plaintiff confesseth the Land is Copy-hold Land, but that the Lord granted it 1 Jac. to N. S. in Fee, who had two Daughters, the Wife of the Plaintiff, and the Wife of *Tho. Kett*, and died seized, and that the Lands descended to them, upon which it was demurred. By *Berkley*, the Grant of the whole ought to be traversed, or confessed and avoided; for the first Grant shews that the Defendant was in of all, and

and the descent to the Wife is but for a moiety, *Dyer* 171. pl. 8. *Per Cur.* upon the whole matter disclosed, *Quere* if a Coparcener cannot distrain upon the Land of another, damage feasant; and the matter of form in the pleading, ought not to be regarded by the Judges, upon Statute 23 *El. Cap. 5.* Judgment was *pro Quer.* *Hutton* said, The descent which was pleaded makes the second Grant void; but by *Richardson*, Though it be avoided, yet it is not confelled, *Hutly*, p. 114. *Port* and *Nates*.

Matter of Form.

In *Replevin*, the Defendant avows for damage feasant, by reason of a Copy granted to him of the place where, &c. by the Lord of the Manor, *Cooper* Bishop of *Winchester*. The Plaintiff saith, That before *Cooper*, *Horn* was Bishop, by whose death the Temporalities came into the Queens Hands, and this Copy-hold, during the time that the Temporalities were in the Queens Hands, Escheated; and the Queen granted it to the Plaintiff in Fee, by force whereof he put in his Beasts, and traverseth the Grant by *Cooper*. *Per Cur.* this Traverse is good, and ought to be, for there is not any confessing and avoiding, because he doth not confess the Seisin and grant by Copy; but if he had confessed, That the Bishop had entred and granted it by Copy, then there needed not any Traverse: So where one justifies by Lease from *J. S.* the Plaintiff saith, That *J. S.* enfeofed himself, it is not good without a Traverse, *Cro. El.* p. 754. *Cover's Case*.

If there is not confessing and avoiding, there must be a Traverse.

Where needs no Travers.

In *Ejectment*, The Defendant pleaded that the Lands were ancient Demesne, and pleadable by a Writ of Right Close, &c. The Plaintiff shews, That they were Copy-hold Lands, and parcel of the Manor, and entitles himself

Ancient Demesne pleaded. Replication, That they are Copy-hold and Traverse.

by

by Lease under the Copy-holder, and traverseth, That they were impleadable by a Writ of Right Close; the Traverse is well enough taken; Cro. Jac. 559. Pimmock and Helder.

The Avowant hath Election to Traverse any part of the Plea which goes to the end of the Action, or justifies the Action.

Traverse the consequence.

In Ejectment, the Defendant pleaded, That the Lands were ancient Demesne, and pleadable by a Writ of Right Close, &c. the Plaintiff shews they were Copy-hold Lands, parcel of the Manor, and intitles himself by Lease under the Copy-holder, and traverseth that they are impleadable by a Writ of Right Close. Demurrer, because this Traverse, that they were impleadable, is but the consequence of ancient Demesne, and therefore not traversable; but *Per Curiam*, that the Traverse is well enough taken.

Where a particular Custom is confessed in the Rejoinder he ought to Traverse the general Custom.

If the Plaintiff in his Rejoinder confesseth a particular Custom, he ought to Traverse the general Custom alledged by the Defendant; as in Replication the Defendant alledgeth a general Custom, *Quod qualibet femina cooperta viro*, joyning with her Husband in a Surrender of Copy-hold Lands; and being privately examined by the Steward, that this by the Custom is a good Surrender; the Plaintiff replies, That there is a Custom in the Manor, *quod qualibet*, &c. who is of full Age may Surrender; but the Wife who surrendered here was of full Age, and doth not traverse the other Custom, And *Per Curiam*, it was ill, *Lit. Rep.* 274. *Anonymus*.

Presidents and Forms of Pleading as to Copy-hold Estates.

The Form of Pleading that a Messuage is parcel of a Manor, & dimissibil & dimiss. per Copiam, 1 Sanders 146. *Wade and Batch.*

That the Lands are Copy-hold Lands, &c. 2 Sanders 321.

Pleading of a Surrender made in the Court of the Lord of the Manor, to the Use of J. W. in Fee, and of the Grant of the Lord to the said J. W. accordingly, 1 Sanders 146.

Pleading of the Surrender of a Remainder of a Copy-hold Estate, to one for Life, to another for Life, to another in Fee, and admission of them accordingly, 1 Sanders 147.

Pleading the Admittance of two Tenants in the Remainder for Life, the Remainder in Fee, 1 Sanders 147. *Wade and Batch.*

The Form of Pleading Copy-hold in Fee-simple, in Tail, for term of Life or Years.

In Fee-simple, *Hern* p. 80. *Co. Entr.* 10. 647. *Estate* 3 *Br.* 463. *Hern* 227. 607.

In feod simplici, Tail, Life or Years, *Ra. Ent.* 627. *Co. Ent.* 206. *U. B.* 128, 157. *Co. Ent.* 657, 123. *Hern* 679.

Ad terminum vite vel vitarum, *Hern* 653.

Ad terminum 2 vitarum successive, *Hern* 72.

Ad terminam 1, 2 vel 3 vitarum successive, *Hern* 83, 123.

Simile in possessione, *Hern* 711.

Ad terminum vite vel vitarum tam in possessione quam in Reversione, *Co. Ent.* 373, 672.

Ad terminum 1 vel 2 vitarum in possessione & i vite in Reversione, *Hern* 724.

Ad Terminum 1 vite in possessione, & 1 vel 2 vicarum in Reversione, Hern 254.

Ad terminum 1, 2 vel 3 vicarum in possessione vel 2 vicarum in reversione unus vite in possessione, Coke Ent. p. 184, 3 Br. 745.

Pleading Surrender.

Surrender in Cur' ad usum in feod. Ra. Entr. 627. Co. Entr. 206. 3 Br. 465.

Extra Curiam in manus 2 Tenent' ad usum in feod. Co. Entr. 575, 645.

Uti.

Extra Curiam ad usum W. pur vie Remainder al Baron & Feme & Heires de Feme, Co. Entr. 207.

In manus Domi, Co. Entr. 575.

Per Tenant pur vie, de moiety al use des Fitz, Hern 255.

Per 2 Tenants pur vie al intent de regrant, Hern 656.

Per Feme Covert secret examinat, Co. Entr. 576. 3 Br. 465.

Per Attorn' secundum consuetudinem Manerij, Co. Entr. 657.

Per literam Attornat, Co. Entr. 576.

Presentment per l' homage de surrender extra Curiam, Co. Entr. 206.

Simile per tenent' facend' in extremis, Co. Entr. 206.

Admissio secundum sursum redditionem, Co. Entr. 207, 575, bis 577, 645, 657.

Admissio heredis super descensu, Cro. Entr. 575, 657.

Dom' concessit querenti terras custumar' que ei descend', restituend' eum ad jus, ubi terre fuer' prius concessae alijs, qui obiit, Ra. Ent. 628.

Dom'

**Dominus ob certas causas seiseibit terras custord
& concessit eas in feod al W. cui Vir et Uxor proprie-
tarij unde relaxaberunt jus, 3 Br. 464**

**Dominus ex traditione propria grant al un pur
vie per Copie, 1 Coke 117.**

Grants.

**Grant per Copie in Fee, Raft. Entr. 627. Co. Limitation des
Ent. 9, 10, 123, 274, 645, 611, 657. 3 Br. 97, 464 Estate.
Hern 81, 226, 707.**

Simile al Baron & Feme, Ra. Entr. 627.

**Simile al Baron & Feme & Heires del Feme,
Cro. Entr. 575.**

**Al un pur vie obe several Remainders in Tail,
& in defectu exitus quod terre venderentur, & denar
inde probenied disponerentur juxta Testamen-
tum, Co. Ent. 207.**

Al un pur vie, Co. Ent. 576, 662.

Al 2 pur vies, Co. Ent. 273. Hern 73.

Al 3 pur vies successive, Hern 83, 711.

Al un pur vie en Reversion, Hern 255.

**Grant al un pur vie in Reversion apyes mort
de Tenant pur vie per primer grant, Hern 724.**

**Simile al 2 pur vies in Reversion; Co. Ent.
114 bis 662.**

**Per Senescallum Regis, ratione Temporal
Episcopatus in manu Regis durand vacac. Co.
Entr. 645.**

**Grant reddend & faciend redditus consuetudines
& servicia consueta, Co. Ent. 662.**

**Terres grant per nosmes, Co. Entr. 662. Hern
254, 255.**

**Pleading a Manor held by another Manor,
11 Rep. p. 17. Sir Henry Nevil's Case.**

**Cur cent coram Dep't Senescallo, Co. Entr.
570.**

Forms of Pleadings of Lords and Copy-holders in reference to Common.

Per Dom^m Manerij habere communiam pro tenentibus Custumariis, Hern 117, 124.

Rex Seisitus de Manerio habuit communiam Pasture in bosco pro se & liberis tenent & custumar manerij pro omnibus averijs p tot Annum, Co. Entr. 656.

Rector Ecclesie seisitus de Manerio Rectorie habuit communiam pro se & tenent custumar Messuag & Terrarum in loco in quo, &c. pro omnibus magnis averijs per tot Annum, Co. Entr. 574.

Un seisitus de Manerio habuit communiam pro se & tenent suis in terris tenent de manerio, quando non seminantur, Co. Entr. 118,

Quer seisitus de manerio habuit communiam pastur pro tenent custumariis Messuag & Terrarum in 10 Acres Pasture pro omnibus averijs per tot Annum, Co. Entr. 9. 9 Co. 112. Hern 117.

Domini separalium Manerijum habuer communiam pasture pro tenent custumariis causa vicinagij, Co. Entr. 10. vel int 191. de insur propri & traverse prescript.

Prior seisitus de manerio habuit communiam pro se & tenementis suis ad voluntatem, in terra, post blada asportata usque reseminationem, & quando facit frasca per tot annum, Et in prato post foenid asport usque Purif, Rast. Entr. 622. 1 Brownl. 66.

Trans bar per prescription de communia in clauso parcel Manerij.

Repl protestando quod clausum non est parcel Manerij, pro placito de insur propria, & traverse prescription, 3 Brownl. 418.

Justificat

Justificat in Trans pro common per Custome infra Panerium pro defectu sufficien' sensur' Def. existen; Lessee p' ans d'un Widdow que tenuit terras per Custome quamdiu casta & innupta viveret, Tompl. 331.

Trans. Justificat pro common & prescribe in in Dord Panerij, Tompl. 371, 379, 392, 418.

Pled que customarij Tenants debent habere solam & separalem pasturam cum liberis tenentibus pro omnibus averiis (barbits except.) Levant & Couchant, 1 Sanders 347. 2 Sanders 321.

Pled que customary Tenants usi sunt habere separalem pasturam come appurtenant Tenementis suis, 2 Sanders 351.

Per Lessee del Copyholder, de Turbis fossis in communia pasture, Hern 80. Simile pro, Hern 116.

Bar in Repleg, That he is Copyholder of another Manor of Copy-hold, called P. and prescribes for Common in loco quo, &c. omni tempore Anni pro omnibus averiis communicabilibus Levant & Couchant, sur le Copyhold appell. P. & que posuit averia sua utendo communia, Repl per Traverse que barbits la fuer Levant & Couchant, &c. Demur special, the Traverse not being good, Winch Entr. p. 970. By four Judges the Traverse was good; its an essential part of the Plea, and the Avowant hath election to Traverse any, part of the Plea which goes to the end of the Action or Justification.

Pled Custome aver common in loco in quo, &c. Repl de son Tozt Demesne & traverse que les avers fuer Levant & Couchant sur le Copyhold Tempore quo, &c. Res. & issue sur le Traverse, Winch. 1068. ad 1071.

Def. in Trespas plead severally pro defectu sufficien' sensur' & monstre lour Title al Copyhold Estates, Tompl. 410.

Iustificat p̄ Common per Cusume per unū Copyholder, Toml. 410.

Cusume pleaded, quod tenend custumariū habent communiam pasture per totū Annū in terris parcel Manerij, Hern 81.

Simile in terris non allegat fore parcel Manerij, Hern 708.

Simile pro averiis vocat Horse-Feasts, Seat-Beasts, Levant, &c. per totum Annū, Coke Etr. 10.

Simile pro bobus levant a festo ad festum in pastura, 3 Br. 61.

Simile in 7 acris terre post blada messa & asportat ex eisdem & residū camporum usque Annūciat nisi interim seminat, 3 Br. 96.

De Arboribus.

Bar to the Avowry, That Sir R. D. was seized of the Manor of R. Unde, &c. locus in quo, contains 14 Acres, and are customary Lands, held of the said Manor, Sir Robert granted this by Copy to T. who dyed, and the Premisses descended to T. his Son, &c. who demised for a year to the Plaintiff. Replication, The Defendant confesseth the seisin of Sir Robert, but said the 20 Acres of Land, and 30 Acres of Meadow (of which the 4 Acres are parcel) are customary Lands of the said Manor, which Lands Sir Robert granted by Copy to T. T. the Father. T. the Father forfeits his Copy-hold Land for Waste, and Sir Robert enters for the Forfeiture, &c. Rejoinder, the Plaintiff confesseth the matter in the Replication to the seisin of T. T. the Father: And farther the Plaintiff shews, the Custom of the Manor was for every Copy-holder d'amputer & decapiter tam tous arbores que debant ustioient estre amputes, & decapitates quam tous

touts juveniles arbores n'esteant plus que 12 Inches square al stubb. The Trees supposed to be decapitated by the Father, were decapitable by the Custom, &c. Demur. Winch Ent. 1022. &c. Drury's Case.

Bar al cognizance, Dean & Cap. West. seist de Panoz de T. a quel certain customary Tenants appertain, &c. S. H. fermor del Dean & Cap. & Senesch del Panoz al Court tenuis 28 March grants al Plaintiff in Fee, secundum consuetudinem le lieu in Question parcel del Panoz. Custom del Panoz fuit pro chesun Tenant aver common en le lieu in Question, per que le Plaintiff mit la bache pur user la common selque, &c. Repl. per confession del grant des customarie Terres al Plaintiff, mes ouster il replie que D. & Cap. 7 May 8 Jac. demised al H. H. le dit Panoz pur vies del A. la feme H. son fitz. & J. la fille, & que un autre Close de Pasture nosme L. esteant customary terres 28 March 18 Jac. fuer grant per H. al Green in Fee, & Green 10 June, fist Waste per succession de Timber (Ash) in le man 21 April 15 Jac. le Plaintiff ove auters del Homage fuit sure d'enquérir des choses enquirables deins le Panoz, le Plaintiff refuse a presenter le Waste pur que il forseit son Cōpyhold, le Seignior 12 July, 15 Jac. enter & le Def. come Bayliff a luy distreine pur damage fasant. Res. Quod protestans que Senesch ne done luy un charge de presenter le Waste & que il nemy refuse a presenter ceo pro placito dic qd D. & Cap. demise al H. pout devant & que il grant al Green en Fee, & monstre Custom del Panoz que chesun Ten poet crop & lop arbores crescents sur leur customary Terres (except Fruit Trees,) & traverse le succession del Ash in le man la. Demur genal al Responder, Winch Entr. 931. al 934. Adjudged pro Quer sur gross default in Pleading; the Forfeiture is alledged

Lex Custumaria: Or,

to be in May, and the Court was holden in April before, which was impossible, *Wilde mesme Case Winch Rep. p. 63. Webb and Barlow.*

Wilde Winch Ent. 125. al 129.

Custom that every Tenant had used to take Woods and Underwoods, 2 *Brown* 350, 251. 1 *Brown* 273, 274.

De Aquæ cursu.

Prescript per sepeales Dominos Panerii de aqua pro tenend custumariis, Hern 255.

De Chimin. Way.

Pro domino Panerii habere viam, &c. p tenend custumariis trans diversa clausa, &c. Hern 72, 711. 1 Brown 368.

Prescription to have an Horse and Foot-way appertaining to a customary Messuage and Close, over the Close newly assigned, and the Lord of the Manor grants to Tenant for Life, by Copy. Defendant justifies as Servant to Tenant for Life, for to use the way. Replication *de son Toxt Demesn*, with a Traverse of the Prescription. Rejoinder, by maintainance of the Prescription, and Issue upon this, *Winch 1093. Lock and Troublefield.*

Bar in Trespass, That every Copy-holder had an Horse and a Foot-way, &c. 2 *Brown* 248, 249.

De Inclosures.

Facere sepes & sensuras clausi versus venellam, ne averia tenend custumar ibidem evadant pasturam, Hern p. 708.

De Forisfacturis.

Trns Bar quod **D.** seistus de maner' grant customar' terras all **Def.** pur vie, **Repl** **Def.** forisfecit terras per non residence per custom. **Respon** **Def.** fuit residens apud manerium & non extra. **U. B.** 157.

Trns Bar per Franktenement, **Repl** **Terras** sunt customar' & grant al **Def.** in Fee. **Respon** quer' forisfecit terras per successionem arborum **Sur** maintenance de **Replie**, **Demur** inde, **Co. Entr.** 277, 280.

Similis Bar & **Replie**. **Res.** quod quer' forisfecit terras per decasum horrei. **Surrej.** Dominus expulit quer' & dimisit aliis. **Hozreum** cecidit. **Quer'** reintravit. Et traveris quod quer' fecit voluntarium vastum permittend' horreum cadere, **Co. Entr.** 280.

Similes Bar & **Repl** **Res.** quer' forisfecit terras per sectam Curie infactam. **Surrej.** Dominus expulit quer' & dimisit alij **Cur** tent, quer' reintravit, Et postea **Curia** tent ad quam quer' fecit default **Demur** inde, **Co. Entr.** 289.

Des terres deviles pur **Cond** broken & **Heir** enter, 1 **Rep.** 21.

In Replevin, the Defendant makes conizance as Bayliff to Sir Robert Chichester, by Damage felonant. Bar to the Conifance, Sir John Chichester, Father to the said Sir Robert, seized of the Manor of **D.** unde locus in quo est parcel, and customary Lands in Fee, granted by Copy to **Geo. Allen** in Reversion for Life: Tenant in possession dyes, **Geo. Allen** enters, and the Manor descended to Sir Robert. **Geo. Allen** espoused the Plaintiff, and dyes. The Custom of the Manor was, That the Wife of every customary Tenant pur vie, dying in possession shall have

have her Widows Estate, by which her Husband being dead, the Plaintiff enters and was seized for Life, and put in her Beasts till the Defendant took them, &c. Replication, the Defendant confesseth the bar, as far as the entry of the Husband of the Plaintiff, and the descent of the Manor to Sir H. But saith the Plaintiffs Husband such a day committed Felony, by stealing a Mare, and was Executed for this; for which the Lord entred as forfeited. Demur general, and Joynder, *Winch Ent.* 968. to 970. *Allen and Branch.* By *Winch*, the Woman shall not have her Widows Estate without special Custom, as in Gavelkind, The Father to the Bough, the Son to the Plough.

Similes Bar & Repl.

Rejoynd. maintenance de franktenement & traverser le grant per Cople, Co. Entr. 280.

Similes Bar & Repl. Res. quod quer forisfecit terras per forgerij del Roll de Customes. Surrej. Quer & alij tenentes agreaverunt ponere consuetud maneris in script, & traverser forgerij, Co. Entr. 280.

Forisfact (pleaded) pur sine insolut Surrej. quod finis non fuit rationabilis. Demur ind. Co. Entr. 645, 647.

Forseiture de terme per tenant pur ans & demise pur vie, Plo. 188.

Simile by Fine levied, Co. Entr. 691. 1 Rep. 71. *Hern* 25.

De terme pur sels de se, Plo. 254. *Rast. Entr.* 609.

De Estate de tenant pur vie per alienation in Fee, Ra. Ent. 65, 208, 398, 647. 1 Rep. 107. *Ver. Intr.* 30, 121.

Per Recovery per fraud en formedon, Ra. Ent. 643. 1 Rep. 82.

Bars per franktenement. Repl. quod terre sunt cust. bars que sunt customary terres, &c.

Trns. Bar quod C. seistus de maner grant customar terres al D. de quo descend al Def. Repl quod maner descend quer qui fuit seistus quous que trans & travers quod terres sunt customar **U.B. 153.**

Dower. Bar quod terres sunt Cōpyhold & Dower. grant per copie, & issint non-tenure Repl. Tenens est Tenens ut de libero tenemento, **Ra Ent. 231.**

Repl Bar quod F. seistus in fee pñst al baron Def. qui est Tenant per le Curtesie. Repl terres sunt customarie, & travers quod F. fuit seistus in fee, **Hern 681.**

Trns. Bar quod terre sunt Liberum Tenement. Def. Res. quod terre sunt customar & fuer dimiss. quer per copiam. Repl. per maintenance de franktenement & traverse grant per Copie, **Co. Ent. 180.** per Title Surrender & Admittance, Fine.

Repl Bar per Title al customarie terres al J. Feme de H. in Fee, & descent al Def. Repl H. & J. ad talem curiam (ead J. existend) sola examinat per senescal) surrender al use de quer Res. main-
tenance de discent, & travers quod J. fuit sola examinat, **3 Brownl. 270.**

Trns Bar quod J. seistus de terris customar surrender al use de S. qui fuit admit. & descent. Def. replie qd J. surrender sur condicoñ de payment. Et quod obtulit denar quos def. recusavit, Res. non obtulit denar, **Co. Ent. 657.**

Repl Bar quod D. seistus de maner grants customar terres al Def. pur vie. Replie S. prius seistus de maner grant al Plaintiff pur vie. Res. Plaintiff surrender al use del J. &c. Surrej.
main

Surrender &
Descent.

maintenance del Abowye & Traverse le Surrend,
Hern 653. & 753. Vide.

Abowye que W. Roy seise de Panoz grant in ffe
al M. qui surrend al use de Def. Repl W. ppi-
us seistus de manerio grant al J. de quo descend
al P. qui surrend al use de M. pur vie, qui demise
al querenti. Res. W. devant grant al J. grant
al B. de quo descend al M. qui surrend al Def.
Et Traverse grant al J. Co. Ent. 575.

Trns Bar quod E. seistus de Panoz pur vie
grant al Def. in ffe. Repl H. seistus de reber
de Panoz puis mozt de E. grant terres al quer &
Traverse grant al Def. Co. Ent. 660.

Trns Bar quod Abbas seise de Panoz grant
custumar terres al J. & H. in ffe. H. surrend al
use de R. qui fuit admis & de luy descend al Def.
Replie quod Terres descendebant juniozi filio per
consuet manerij. Abbot granted al dit R. contra
consuet qui mor seise. Abbas restituend grant al
quer junioz. filio & traverse que Abbas granted al
J. & H. Rast. Ent. 627.

Trns Bar quod dominus manerij ob certas cau-
sas seisivit terras custumarias unde E. fuit seistus
pur vie & grant al M. in ffe. E. Release. M.
Surrend al use de Def. qui fuit admissus. Repl
E. mor seisse, & discent querent & Traverse le
Release, 3 Browl. 463.

Trns Bar quod T. seistus de Panoz grant per
Copie al Def. pur vie. Repl Abbot ppius seistus
grant al R. pur vie, & puis grant le Reversion al
Plainiff pur vie. Res. Abbot devant grant in re-
version demise Panoz pur ans al J. le Roy seise
per surrend del Abbot grant Panoz al dit T.
Surrej. Maintenance de grant in Reversion per
Copie & Traverse demise de Panoz, Co. Ent.
662.

Trns

Trans Bar p frank-tenement. **Repl** que terre fuit customar & fuit grant per Copie pur vies. Et per Custome Feme Plaintiff est seise p son frere Bench, 3 Brownl. 474.

Trans Bar p frank-tenement. **Replie** R. seistus de Hanoz grant p Copie en Fee al J. qui surrender al use de Plaintiff qui est admit. **Res.** p consuetud maner Dominus habere debet finem pro admissione. Et quer forisfecit terras p finem insoluf. **Sures.** finis non fuit rationalis **Demur** inde, Co. Ent. 657.

Quod J. seistus de maner unde terre customar discens suu filio p consuet concessit terras viro & Ur. & heri viri Uroz sup vixit, & reuersio discens fratri & de eo desc. iuniori filio, Hern 679.

Bar in **Repl** quod **T. W.** was seized of the Manor of **H.** (unde locus in quo est parcel & customar terres) in Fee. Custom of the Manor was for every Tenant to hold successive, as they are named in the Copy. **W.** grants to John Dodger and **C.** and **M.** his Daughters, for their Lives. John enters and was seized for Life, he dyes, and **C.** enters and was seized for Life; she afterwards marries the Plaintiff, by which he was seized in right of his Wife and put in his Beasts, until, &c. and avers the Life of the Wife. **Repl** **Def.** protestando the place in Question is not parcel of the Manor of **H.** &c. pro placito, he confesseth the seisin of **W.** of the said Manor, unde, &c. and that there was such a Custom as the Plaintiff hath alledged; and that **W.** granted to Dodger and his Daughter for Lives, and shews the entry and seisin of the Father: But farther saith, That **W.** by Indenture Enrolled, bargained and sold the place in Question to John Dodger in Fee, and the Act of 27 **H.** 8. De uses & proclamaf upon a Fine, according to the 4 **H.** 7. and

and the Fine levied to the Use of John Poger in Fee; he dyes and the Premisses descend to Parmaduke his Son, who levies another Fine of the Premisses to the Use of him and M. his Wife, and the Heirs of the Husband: The Husband dies, his Wife survives, and enters into the Premisses; and after the Plaintiff enters and puts in Beasts, &c. upon whose possession the Wife re-enters, and the Defendant takes the Beasts of the Plaintiff. C. did not claim within five years, and that the Plaintiff and his Wife were barred. Upon Demurrer general to the Replication and Rejoinder, the Judgment of the Court was, That the Fine was not a bar, *Winch Ent. p. 926 ad 929.* Vide the Argument of this Case, 9 Rep. *Margaret Poodgers Case.*

Abowry p. Aelle p. ans del Cvesq. p. Damage Pezant, & averre le vie del Cvesq. Bar que le lieu est parcel d'un Pannoz & demisable p. Copie, & intitule luy mesme p. Copie grant p. pdecessor del Cvesq. Defend maintaine son Abowry & Traverse le Prescription del Copyhold, placita Gen & Spec, 579.

Bar to the Conifance in Replevin, That the 10 Acres are Copyhold, parcel of the Manor of W. And King H. 8 seized of this Manor, grants by Copy the said 10 Acres to R. D. he dies, and a descent to Grace and Alice his Daughters and Co-heirs. Grace dies, a descent to S. C. her Son, who demiseth his part for a year. Bepe the Defendant protest that the 10 Acres are not Copyhold, and that King H. 8. had not granted to R. pro pto, That King H. 8. was seized of those 10 Acres in Fee, & in iur' corone, and died seized, and descent to King Edw. 6. who grants them to R. J. and W. J. in Fee. R. releaseth to W. W. dyes sole

sole seized, descent to *W.* his Son and Heir. *W.* the Son dies without Issue, descent to *R.* Father of *W.* in the Conifance; Fine with Proclamation to the Use of *R. J.* Father of the said *W.* (in the Conifance named) seisin in Fee. *R.* dies, descent to *W.* (named in the Conifance) who entred and was seized in Fee, and because the Beasts were Damage fesant he maintains his Conifance. Demurs, and Judgment pro Quer, for that the Replication doth not confess or avoid, nor deny the bar to the Avowry, *Winch Ent.* p. 997, 998, 999. *Foster and Woodcock.*

Eject. Bar que *W.* seistus de *Panoz* grants customar' terres in Reversion al *Def.* & auters pur vies. *Repl* que *W.* demised ces *Panoz* al *C.* & *R.* determinable pur vie del *M.* il's assigne al *M.* qui grant Reversion de terres al *H.* pur vie. *Rej.* que *D.* fuit prius seistus de *Panoz* que descend al 3 Coheirs quas *W.* disseise, &c. *Surrey p* maintenance de *Replie* & *Traverse* le disseisin, *Demur* inde *Co. Ent.* 184.

Repleb. Quod Reg. Eliz. seistita de manerio unde, &c. concessit terras customar' *R.* & *M.* *Wrox* ejus & heres *Wrox*is qui sursum reddider' ad usum *Def.* *Bar* quod *W.* prius seistus de maner' concessit terras al *J.* de quo descend al *P.* qui sursum reddidit al *A.* qui sursum reddidit al *M.* pur vie qui dimisit quer' *Repl* quod *W.* ante concessiōem al *J.* concessit terras al *B.* de quo descend al *M.* qui sursum reddidit *Def.* & *travers* grant al *J.* & issue inde, *Co. Ent.* 575.

Quod J. seistus de manerio unde, &c. concessit *Def.* pro vita in Reversione terras customar' dimissibil' pro 2 vitis tam in Possessione quam in Reversione, *Hern* 724.

Tens quod *C.* seistus de manerio concessit terras customar' in feod al *B.* de quo descend *Def.* *Repl*

Repl C. fuit sistus de manerio unde, &c. quod discens quer & traverse quod teste sunt custum, U. B. 153.

Trns Def. iustif. sub tenent custum & monstroit le Estate de Copyhold durante viduitate, Tomps. 395.

Trns & novel assignmt Def. dicit quod pmissa tempore, &c. parcel & custmaria & dimissibilia p cop. cuicunq; plone ill capere volent in Walliat seu pro vita. Et quod F. G. p̄s fuit sistus ad cur tenent 26 Martij, dimisit cuidam W. in feodo qui dimisit Def. pro Anno virtute cuius, &c. & done Colour. Repl quod pmissa sunt liberum tenementum quer & sic manutenet nafacionem & traverse que pmissa fuer parcel manerij de L. Res. & exitus sur traverse. Keb. 465, 467.

In Repl Copyhold in Reversion p copiam tenent in possessione advocat captionem pur Damage felant & custom del Panoz granter Estates en possession ou reversion, Hern 777.

C A P. XXXIII.

Evidence, Tryal, Issue. What shall be a good Evidence to prove the Custom alledged or not. Presumptive Evidence. Where Copy of a Lease is good Evidence. What shall be tryed by the Jury, and what by the Court-Rolls. Substance found in special Verdict. Who may be admitted to give Evidence. When Issue is taken upon a Surrender, where to be Tryed. Venue.

What shall be a good Evidence to prove the Custom or not.

THE Custom of a Manor was laid to be, That if a Copy-holder hath two Sons and a Wife, and dyes, and the eldest Son hath Issue and dies in the Life of the Wife, that the younger Son shall have the Land, the Issue being upon the Custom; the Jury found the Custom to be, That the younger Son shall have the Land, unless the eldest was admitted in his Life, and paid the Lords Fine. *Per Curiam*, the Verdict is not sufficient to prove the Issue, *Moor, n. 566.*

In Replevin, If the Defendant justifies the taking as Damage fasant. The Plaintiff in bar pleads by reason of a Common to such a Copy-hold, for all Beasts Levant and Couchant, and avers that these Beasts were Levant and Couchant, &c. upon which the Parties were at Issue; and it is found that part of the Beasts

X

were

Part found for
the whole.

were Levant and Couchant, and part not; this is found for the Defendant, for the Issue is upon the whole, and the contrary to it is found, *Trin. 17 Jac. B. Sloper and Allen.*

Non concessit.

Several Cu-
stoms within
several limits
ought to be
specially shew-
ed.

The Issue was in *Kemp and Carters Case*, 1 *Le- on. Case 70. p. 55.* If the Lord of the Manor granted the Lands in question, *Per copiam rotulorum curie Manerij præd. secundum consuetud. Manerij præd.* It was given in Evidence, That within the said Manor were divers customary Lands, and that the Lord, now of late, at the Court of the said Manor, granted the Land *per Copiam Rotulorum curie*, where it was never granted by Copy before: *Per Cur.* the Jury are bound to find *Dominus non concessit*, for notwithstanding *de facto Dominus concessit per Copiam Rotulorum curie*, yet *non concessit secundum consuetudinem manerij predict.* for the said Land was not customary, nor had the Custom taken hold of it. It was shewed then, That within the said Manor some customary Lands are demisable for Life only, and some in Fee, By *Anderson* Chief Justice, He who will give in Evidence these several Customs, ought to shew the several Limits wherein the several Customs are severally running; as that the Manor extends into two Towns, and that the Lands in one of the said Towns are grantable for Lives only, and the Lands in the other in Fee, and he ought not to shew the several Customs *promiscue valere*, through the whole Manor.

Substance
found.

In an Action brought, The Defendant alledgeth a Custom of a Copy-hold to be demised in Fee, Tayl, or for Life, and made Title by a demise in Fee to himself. The Plaintiff traversed the Custom, and the Custom was found to be, to demise in Fee, or for Life, but not in Tayl: *Per Cur.* the Issue was found for the De-

Defendant, because the substance was found for him, and the Tayl was but inducement, *Moor, n. 490. Dorley and Wood.*

Wadsworth's Case before Judge *Crawley* at *York Assises*, was upon an Intail of a Copyhold within the Manor of *W.* and several ancient Intails shewed in Evidence, in *Edward III.* time, and remainders limited over upon such Intails, and Plaints in nature of Formedons, brought there for such Remainders, and Recoveries thereupon, and several Issues after had taken their Admittances, as of Fee simple Land, as Heirs in Fee; and for this cause Purchasers look at the Copies, and seeing Fee-simple in Admittances, are secure the Estate is so, and apply their Assurances accordingly; the Jury found for the Plaintiff against this Intail, and it shall be presumed the Intail hath been cut off some way, when many Admittances have been in Fee simple.

Presumptive Evidence,

The Custom of a Manor is, That the Wife shall have it during her Life, and on Evidence it appears that she shall have it, *durante viduitate*, this Evidence doth not maintain the Custom, 4 *Rep.* 30. Less Estate than the Custom.

If the Parties be at Issue upon the time of the Surrender made, or the Court holden, the same shall not be tryed by the Rolls of the Manor, but by the Country, and the Party may give in Evidence the truth of the matter, and shall not be bound by this mis-entry of time upon the Rolls, for this Entry is not matter of Record, 1 *Leon.* 189. *Burgefs* and *Foster.* The time of the Surrender or of the Court holden, to be tryed by the Jury and not by the Rolls.

The Issue was upon *separalis pastura*, upon the Traverse of the sole Feeding; the Defendants Evidence was, That the Plaintiff used to Mow, and provide Fodder for Winter, which *Per Curiam* they cannot, Common being to be taken Evidence to prove *separalis pastura.*

taken *per Bouch*, In *North* and *Holland's* Case,
2 *Keb.* 577.

If in Ejectment a Lease is pleaded of a Manor, &c. whereof the Tenements in which were parcel, and upon this Issue is joyned, *Quod non dimisit manerium*; and the Jury upon this give a special Verdict (*viz.*) That there were not any Free-holders, but divers Copy-holders of the Manor, and that this was known by the name of a Manor, although that this was not a Manor in Law for default of Freeholders; and although this was alledged in pleading to be a Manor, which pleading is made by learned Men; and although this was in an Action Adversary and not Amicable, yet for as much as an Issue is tryable by the Lay Gents, and in truth the Tenements in which, &c. pass by the Lease, this Verdict is found for him which pleads the Lease of the Manor; for the substance of the Issue is, whether it was demised or not, *M. 22* and *23 Eliz. B. R. Vines* and *Durham*, cited in *6 Rep. 77*. Sir *Moyle Finch's* Case.

Substance
found on spe-
cial Verdict.

The Custom
of neighbour-
ing Manors
good Evi-
dence.

The Issue was, whether Fines (called *Gresham* Fines, *ab ingressu*) are due to the Lord till full Age; and Evidence for the Defendant was, That other Manors adjoyning had the same Custom not to pay till full Age, and allowed, 3 *Keb. Champion's* Case.

In Ejectment, The Plaintiff declares of a demise made for three years, and it was confessed by the Plaintiff, That the Lands were Copy-hold Lands, and that the Plaintiff had not Licence to demise them for three years, neither could he prove by any Custom, that he could demise them for three years; so the Plaintiff was Non-suit, and the Lessor taken for

for a disseisor, *Per tot. Cur. 1 Brownl. p. 133.*
P. 8 fac. Cramporn and Freshwal.

By Rolls, if Copy of Court Rolls are shewed to prove a customary Estate, the enjoyment of such Estate must also be proved, otherwise the proof is not good, *Stiles p. 450. in Pilkington and Bayshaw's Case.* When proof by Court Rolls are good.

Copy of a Lease which the Lord had in his Hands, whereby the Tenant had power to make Leases, is good Evidence, without swearing it a true Copy; also the finding by special Verdict or Admission on former pleading is good Evidence, unless the contrary appear, *1 Keb. 720. Lee and Boothby.* Copy of a Lease good Evidence. Special Verdict or admission on former pleading good Evidence.

Copy of Roll under the Stewards Hand, who was Counsel for the Lord, Plaintiff, was admitted good for the Copy-holder; but contra of short Notes by way of Breviat, *1 Keb. 720. Lee and Boothby.* Copy of the Roll, where good Evidence.

The Copy-holder moved the Court, That the Steward might be ordered to bring in the Court Rolls to enable him to defend his Title, but the Court denied it, *Stiles 128.* Order to bring in the Rolls for his defence, not granted.

Who may be admitted to give Evidence.

The Steward, though he had a Fee for Admittance may be a Witness, *3 Keb. Champion's Case.* Steward.

To prove a Custom, That a Copy-holder may cut Trees, a Copy-holder that had not but a Kettle may be a Witness, *2 Siderfin p. 7.* Copy-holder.

The Lord may be admitted to give Evidence for the Lessee or Copy-holder, though the Court would have spared him, had there been other, *1 Keb. 15. Gerrard and Lister.* The Lord.

Court-Leet
Books.

Proof of the Plaintiff Tenant of the Manor, was by Court Leet Books, by presentment of the Homage, and not *per Juratores*, of any certain place, and so it was supplied by Witnesses; this was in a Case of Fishing.

Copy of Court
Roll.

By consent, the Jury had a Copy of Court Roll given by the Plaintiff in Evidence, 1. *Keb* 22. in *Trowel's Case*.

Traverse, that
he was Stew-
ard, *ill*.

In Ejectment the Defendant pleaded a Surrender of a Copy-hold, by the Hands of E. then Steward of the Manor. Issue was joyned *absque hoc*, That he was Steward: *Per Curiam*, this is no Issue, for the Traverse ought to be general, That he did not Surrender, for if he were not Steward, the Surrender is void; Repleader was awarded, *Cro. Eliz.* 160. *Wood and Butts*.

Venue.

Note, when
Issue is to be
taken upon a
Surrender
where to be
Tryed.

Where Issue is taken upon a Surrender, it shall be tryed where it was alledged to be done, and not where the Manor is, of which the Copy-hold is holden, *Cro. Eliz.* 260. *Wood and Butts*.

The Custom was alledged to be in *Warfield*, in the Manor of *Wargrave*, and the *Venire facias* was *de Wargrave tantum*, a good *Venue*, and need not be from both, 2. *Bulstr.* 135. *Goodgroom and Moor*. For the Issue being whether within the Manor there be such a Custom, the *Venue* shall be only of the Manor, and *Warfield* being parcel of the Manor shall be intended to be within it, *Cro. Jac.* 327.

Custom for Common was alledged to be as to half an Acre of Land Copy-hold, parcel of the Manor of *Buckland* in *Buckland*, and the *Venire* was *de vicineto Manerij*, its ill; for the Manor being alledged to be the Manor of *Buckland* in

The Law of Copyholders.

311

in *Buckland*, the *Venire facias* ought to have been from *Buckland*, and a *Venire de novo* awarded, *Cro. Jac. p. 302. Mortimer and Pettyfer.*

The Issue was whether the Copy-holder in one Town had Common in Land lying in another Town. Exception was to the Tryal, because the *Venire* was not of both Villages, 1 *Brownl. 41.*

G A P. XXXIV.

Of Special Verdict. Imperfect Custom not well found. Failure of Prescription. Finding directly, not argumentatively. How the Custom must be found by the Jury. Substance found. Verdict aided. Presidents of special Verdict.

THE Jury find *quoad parcel tenementorum*, the special matter, and they did not shew what parcel, and they found nothing for the residue, and the Verdict was held to be ill for both, and a *Venire facias de novo* awarded, *Cro. Jac. 31. Anselm's Case.*

Quoad parcel, and shew not what, and nothing for the residue.

Special Verdict upon the Custom of the Manor of *Toddington*, That any Copy-holder might Surrender out of Court into the Hands of two Tenants, Copy-holders of the Manor, &c. The Copy of the Surrender found *in hæc verba. Toddington in the Margent. At the Court Baron of the Honour of Hampton J. S. and J. D. Tenants of the Honour of Hampton, do present, That J. R. did Surrender into the Hands of two Tenants of the Honour. Per Jones, This being a Court of the Honour, and into the Hands of the Tenants of the Honour, its not good; but by the other*

An Honour.

three Justices its good enough. For *Toddington* being in the Margent it shall be said a distinct Court by it self: For an Honour consisteth of many Manors; yet all the Courts for the Manors are distinguished, and have several Copyholders. *Cro. Car.* 366. *Seagood and Home.*

Verdict found
not according
to the Indenture.

Special Verdict was, That Copy-holder of Inheritance bargained and sold his Copy-hold Land, &c. to the Lessee of the Manor, and this was by Indenture, and the Indenture was to this effect, That he bargained and sold all his Lands and Tenements, as well Copy-holds as other Lands, bought of *John Culpepper*, in such a Town; but it is not found by the Verdict nor averred by the Party, That the Land was bought of *John Culpepper*, and so ill. *Winch Rep.* p. 67. *Hasset and Hanson.*

Custom not
well found.

A Copy-holder of Inheritance made a Letter of Attorney to two Joyntly and severally, to Surrender his Copy-hold Lands in Fee to certain Uses, after his death; but the Verdict doth not find that the two Attornies were customary Tenants, nor doth it appear that they were customary Tenants at the time of the Admittance (and the premier possession will make a disseisin by the Defendant, if the Custom be not well found;) but it was objected, here is so much found as shall make it to be presumed that they were Tenants of the Manor, for it is found that the party is admitted *secundum consuetud. Manerij*, which cannot be a good Admittance if they were not Tenants. But *Rolls* answered, to be admitted *secundum consuetudinem* goes to the Admittance, not to the Letter of Attorney (the Custom is not good) neither is it found that the Land is demisable at the will of the Lord, &c. and so it may be free

It is not found
that the two
Attornies
were customa-
ry Tenants.

free Land. and the Custom reaches it not, *Stiles*
p. 311. *Wallis and Bucknal.*

The Plaintiff entitles himself to have Common of Pasture, &c. to his Copy-hold, and the Custom was traversed; it was found he ought to have the same Common, but that every Copy-holder used to pay, time out of mind, &c. *pro ead. communia unam gallinam, & quinque ova annuatim*; upon this Verdict the Plaintiff shall have Judgment; this is not a common *sub modo*, for the Ter-Tenant had remedy for the Hen and Eggs by distress, and it is not parcel of the Issue; but had the Jury found that the Plaintiff shall have Common, paying so many Hens and Eggs, the Issue had been against him, and it had been parcel of the Custom; its not *Modus Communie*, but collateral recompence. One prescribes to carry Water out of the River, the Jury find he ought to have this paying 6 d. yearly. *Per Cur.* he hath failed of his Prescription, for he had prescribed absolutely, and the Jury found it conditionally, or *sub modo*, and the Ter-Tenant in this Case hath no remedy but by disturbance, 5 Rep. 68. *Gray's Case.*

Failure of
Custom found

Failure of
Prescription
found.

If the Issue be, whether, where a Copyhold is granted to three for the Lives of two, he who dies seized, &c. ought to pay an Harriot Custom, and the Jury find there never was a Grant of such Estate within the said Manor; This is not well found, for this is but an argument that no Harriot ought to be paid, but they ought to have found it directly, *M. 15 Jac. B. R. Ven and Howel.*

Jury must find
directly and
not argumen-
tatively.

If the Issue be, whether by the Custom of the Manor a Copyhold may be granted to three for the Life of two, and they find that by the Custom, it may be granted for three Lives;
this

this is not well found, because it is only by Argument, because if a greater Estate may be granted, a lesser may be. So if the Issue be whether a Copy-hold may be granted in Tail, and they find it may be granted in Fee, *mesne* Case.

What shall be intended by the Juries finding, if, &c. then for the Plaintiff.

If Jury be satisfied the Plaintiff hath Title, the Court ought not to doubt thereof.

Custom must be found in the manner that he pleads it.

Verdict not aptly concluded.

Special Verdict upon a Patent from King H. 8. (which Patent was adjudged void to pass the Estate) the Jury find if it were a good Patent then for the Defendant, if otherwise, they find for the Plaintiff. It is intended there is a sufficient Title found for the Plaintiff, unless by this Patent it be defeated; so that if the Jury be satisfied that the Plaintiff hath any good Right by any other manner of Title, the Court ought not to doubt thereof, and so is *Goodall's Case*, 5 Rep. 97. *Cro. Car.* 21. *Castle and Hobbs*.

Custom was pleaded by the Defendant, That if a Copy-holder in Fee hath a Wife at the time of his death, and two Sons or more, that the Wife shall have her Free-Bench, during her Life, and that if the eldest Son dye, living the Wife, though he hath Issue, his Issue shall not have it, but the second Son. The Jury found the Custom that the youngest Son should have it, unless the eldest Son was admitted thereto, as to the Reversion, or made a Fine for it with the Lord in his Life-time: *Per Car.* The Custom is not found in that manner that he pleaded it, therefore it is found against him that pleaded it; for he pleaded a general Custom, without exception, and the Custom found is with an exception, and special, as the Case is in *Dyer* 192. Where a Custom was pleaded, That a Female should have it, and it was found she should have it, *durante viduitate*, but in this Case there was not any Verdict upon this Issue, for they concluded their Verdict, *Si, &c.* they found

the Defendant guilty, if otherwise, not guilty, and so there is not any conclusion of the point in Issue. *Per Cur.* a gross fault, and a *Venire Facias de novo* was awarded, *Cro. El.* 415. *Boraston and Hay.*

In Trespass, the Plaintiff in his Replication makes Title, That this Land is parcel of the Manor of *D.* and demisable, &c. by Copy in Fee, in Tail, for Life or years, &c. and the Land was let to him by Copy in Fee; the Prescription was traversed, and found that it was demisable, &c. in Fee, but never in Tail, and that it was granted to the Plaintiff in Fee, this was found for the Plaintiff; for the Allegation, That the Land was demisable in Fee, or in Tail, &c. is but a Conveyance to his Title; and for that it was found, that it was demisable in Fee, and that it was demised unto him in Fee, this is the substance of his Title, and so sufficient, *Cro. Eliz.* p. 431. *Doyle and Wood.*

Substance found.

In *Eject. Fir.* If the Jury find a special Verdict, That *J. S.* was seized of the Manor of *D.* in his Demesne, as of Fee, in which Manor was a Copyholder of the place where, &c. and commits Waste, by cutting down an Oak, and that after *J. S.* dies, and the Lessor of the Plaintiff, being his Cousin and Heir, enters in the Manor, in the place where, &c. for the said Forfeiture, and was of this seized in his Demesne, as of Fee, and concludes *si super totam materiam, &c.* This is not a good Verdict, because it is not found that *J. S.* died seized of the Manor, and that this descends to the Lessor, as his Cousin and Heir, for it may be that *J. S.* aliened the Land and that the Father of the Lessor, or the Lessor himself re-purchased this, and that he was also Cousin

Seisin and descent as Cousin and Heir.

Cousin and Heir to J. S. and although it be in a Verdict, it shall not be intended, that the Fee continued in J. S. at the time of his death, and that he died thereof seized, without finding it, 2 *Rolls Abr.* 699. *Cornwallis and Hammond.*

Part found,
the Issue upon
the whole, not
good.

In Replevin. The Defendant justifies by reason of Common to such a Copy-hold, for all Beasts Levant and Couchant, and avers that these Beasts were Levant and Couchant, &c. upon which the Parties are at issue, and it is found that part of the Beasts were Levant and Couchant, and part not; this is found for the Defendant for the whole, for the issue was upon the whole, and the contrary is found, 1 *Rolls Abr.* 707. *Sloper and Allen.*

Presidents in Special Verdicts.

Quod Tenementa sunt custumaria & dimissibilia per Copiam & dimissio per Dominum ex traditione propria, 1 Rep. 117. *Chudleigh's Case.*

Sursum redditio & admissio in feodo, Co. Ent. 207.

Simile in Tallio & communis recuperatio inde, Co. Ent. 206.

Tenementa concessa per copiam la A. & B. super vixit, Co. Ent. 273.

Consuetudo infra manerium de devisatione, & de visatio in hac verba, Co. Ent. 124.

Littera Attornat' ad sursum reddend' tenementa custumaria, sursum redditio & admissio superinde, Coke Entr. 576, 577. *Et si sit sufficiens in Legge.*

Manerium & Tenementa ab antiquo discendebant 2 percenariis, qui fecer' partitionem de terris dominicalibus, ac Tenementa Custumaria & servitia remanser' in communi, Coke Entr. 711.

Officium Seneschalli manerij execut' per deput' & contentio inter 2 Seneschallos, de Cur. Baron Tenend.
9 Rep. 45.

In Ejectment, Jury find that the Lands are demisable by Lives, in possession or reversion, and that the Widow in possession held the Lands so long as she remained sole and chaste, and that *M. C.* Widow was seized for Life, *durante viduitate*; the Lord grants the Reversion of the said Lands by Copy, to *R. C.* the Son of *M.* for Life, to commence after the death, forfeiture or surrender of *M.* *M.* surrenders one moiety of the Premises to *R.* The Lord dies, discent of the Manor to *C. S.* his Cousin and Heir. *R.* Tenant for Life of one moiety, and *M.* Tenant in Free-Bench of the other moiety; the Lord by Indenture demiseth to the Lessor of the Plaintiff for 99 years, (if he and *J.* and *B.* his Sons shall so long live) to commence after the death and determination of the Estates of the said *M.* and *R.* and of the viduity of such person as shall be his Wife at the time of his death. *M.* surrenders her moiety to *R.* *R.* dies seized of both moieties. *P. C.* (the Defendant) his Wife is admitted; she commits Fornication and had a Bastard. Jury find the entry of the Lessor. If the Lease shall commence before *P.* dies was the Question, *Winch Ent.* 455.

Jury found that the Messuage and Lands *tempore quo, &c. & tempore hors memory*, were customary, part of the Manor of *B.* a Prebend of *S.* demisable by Copy of Court Roll, for one, two or three Lives, and that by the Custom of the Manor, every Tenant for Life sole seized of any customary Estate for Life in possession, may nominate one to succeed him to be Tenant to the Lord for Life, and that the party nominated used to require his Admittance,
and

and pay such Fines as were taxed by the Homage. Another Custom was, That every customary Tenant sole seized in possession, may cut Timber Trees, &c. and that *Mason* the Defendant being Copy-holder for Life, 1 *May* 40 *Eliz.* named *R. P.* to be his succeeding Tenant. They also find that *Robert P.* being Prebendary of the said Prebend, and seized in Fee of the said Manor, 20 *March* 40 *Eliz.* demised by Indenture, the Manor of *B.* to *Peter Hoskins*, for three Lives, and by the said Indenture Bargains and Sells to him all the Timber Trees, &c. by which Indenture is a Letter of Attorney to make Livery; and they find the Indorsement on the Indenture to this effect, Midd. That *J. B.* one of the Attornies entred in part, and made Livery. Midd. That *J. G.* the other Attorney entred into part, and made Livery. The Livery made in the House of the Lord was Endorsed, but it is not mentioned to be part of the Manor: The Jury find the entry of *Peter Hoskins*, and seisin for three Lives, according to the Lease (which aids the other Imperfections.) 1 *Jan.* 43 *Eliz.* *Peter Hoskins* demiseth to *J. Hoskins*, *Masons* Tenement and Lands for 99 years, *March* 3 *Jac.* *Mason* continuing customary Tenant for Life, after his nomination aforesaid, cut down 20 Trees off his Copy-hold; upon which *J. Hoskins* 6 *Jac.* entred upon the Land, and demised to the Plaintiff, who enters upon *Mason*, who re-enters, and if his re-entry be lawful, they find for *Mason*, and if not lawful, they find for the Defendant, *Winch* Ent. 440. *Rowls* and *Mason*.

Verdict alided.

After non-suit one of the Defendants was dead, this suggestion must be entred on the Roll.

In Ejectment to try the Custom of *E.* of Copies for three Lives, the Plaintiff was non-suit, and one of the Defendants being dead, *Hales* Chief Justice advised to enter a Suggestion on the

the Roll, That one was dead, or else the Judgment for the Defendant on the non-suit will be erroneous as to all, 2 Keb. 832. *Hawthorn versus Rowden*.

C A P. XXXV.

Copy-holders relieved in Chancery, or what things in respect of Copy-hold Estates are relievable in Chancery, or not.

NOW I conceive it will not be impertinent (but rather a thing well approved of) to cite some Cases, Resolutions and Decrees, wherein Copy-holders have been relieved, and what remedy the Chancellor will give in respect of Lords, Copy-holders, Fines, Forfeitures, Surrenders, Admittances, Trusts, &c. and what is proper to be brought and examined in that Court.

Alteration of a Custom by consent of Lord and Tenants allowed in *Chancery*, and decreed accordingly, *Dyer contra Dyer*, 10 July. 44 El. Custom altered.

If any particular Copy-holders complain in *Chancery* of the grievousness of a Fine, where the Fine is arbitrable, at the will of the Lord; if such Fine be outrageous my Lord will mitigate it, and lessen it according to the time: But if the whole company of Copy-holders do exhibit a Bill, praying a mitigation of their unreasonable Fines, where they are arbitrable at the will of the Lord; in this Case my Lord will reject the Bill, for, said he, *I can make no Act of Parliament for them*, 24 Nov. 44 Eliz. Outragious Fines as to particular Copy-holders relieved, but not upon a Petition by all the Copy-holders.

The

Reasonableness of a Fine how to be determined and properly recovered.

One Improved years value decreed to be a moderate Fine.

Forfeitures wilful, not relieved.

Copyholder conceals the Land of the Lord.

Commons for Copy-holders.

The Defendant being Lord of a Manor, had 150 l. as a Fine upon the Plaintiffs admission to the Lands in question: The Court of *Chancery* directed to an Issue, whether the 150 l. were a reasonable Fine, or not? and the Defendant got a Verdict, and the Damages were given by the Jury, being to the Value. This Court declared, That the Fine was proper to be recovered at Law, and that the reasonableness or unreasonableness of a Fine to be paid by a Copy-holder, is a question of Law, and not to be determined by a Jury, *Hill contra Jacobs*, 3 *Jac.* 2. f. 2.

In the case of *Popham and Lancaster*, 12 *Car.* 1. The Court seeing there hath been a variation of the Fines, and not certain, decreed, That one improved years value, is a moderate Fine between Lord and Tenant; so was *Middleton and Jackson's Case*, 5 *Car.* 1.

In the Case of *Ackland Pope* and my Lady *Wentworth*, the Lord Chancellor said, he would not relieve any Copy-holder, who through wilful Forfeiture hath given cause of seizure to the Lord; for he said, The Lord had as good a right to a seizure for a Forfeiture, as a Copy-holder to his Copy-hold Estate; but a wilful Forfeiture he would not relieve, but for negligence he might.

If a Copy-holder conceal the Land of the Copy-hold to the disherison of the Lord, and say to the Lord, *Lay out of my Land, and I will pay you your Rent for it.* My Lord Chancellor *Elsemere* said, *He is worthy to return to his ancient villainous Tenure again.*

Commons for Copy-holders and Terminors to be relieved in *Chancery*, *Torbil* 108. *Colcot* and *Lee*.

A Copy-holder can have no Affise of Common against his Lord, but is to be relieved in Equity The Tenants of *Petsworth* and the Earl of *Northumberlands* Case, *Totbil* 108.

Copy-holder can have no Affise against his Lord, but relievable in Equity. Copy-holder to sue at Law sans forfeiture.

The Court will compel the Lord to admit a Tenant Copy-holder, to sue at Law, without any forfeiture of his Copy-hold, *Totbil* 65.

Tenant by Copy shall not have Affise against his Lord, because he hath a Frank-tenement, 4 Rep. 21. but he shall be relieved in Equity, *Totbil* p. 108.

A Suit was to compel a Lord to Grant a Licence to let a Copy-hold; but because the Defendant said in his Answer, That the Copy-hold was forfeited, the Court would not enforce him to grant a Licence till the forfeiture was examined, *Totbil* 107, 108.

Licence; Forfeiture to be examined before a Licence be decreed.

A Court of Equity shall compel a Lord to admit a Copy-holder; for before Admittance he cannot have an Action (upon Surrender) and he hath no remedy at Common Law, *Hetly Rep.* p. 2.

Admittances;

A Bill in *Chancery* to admit a Copy-holder against Lord and Steward, and this was only to try a Title, to enable a Mortgagee to try a Custom, That if mony be paid after the day, so it be before Entry of the Surrender made by Mortgagee, that its a sufficient Redemption; and also where the Wife Inheretrix dies sans Issue, the Husband shall have the Fee at *Taunton Dean*. Per Cur. the Plaintiff shall be admitted, though the Steward need not have been made one of the Defendants, 2 *Keb.* 357. *Towel* versus *Cornish*.

Plaintiff admitted to try a Title upon a Mortgage.

* If a Copy-holder removes or defaceth the bounds of a Copy-hold, it is proper for such a Court to design them; but parcel or not parcel

* Chancery will design the Bounds of a Copy-hold, but not whether parcel or not parcel,

Possession
after 43 years.

cel of a Copy-hold belongs to the Common Law to try, *Hetly p. 2. Blackbal and Thursby.*

Lyford contra Coward, 35 Car. 2. Richard Lyford Senior, the Plaintiffs Father, being seized in Fee, of Freehold and Copy-hold Lands, and having had Issue Richard, Thomas and John, now Plaintiff, by Will gave the Plaintiff all his Copy-hold Lands, and to his Heirs Males, and for default of such Issue to his Heirs general, and made a Surrender to the Use of his Will; That the Surrender was presented, and the Plaintiff admitted Tenant, and hath ever since been of the Homage, and enjoyed the Copy-hold Lands. That Richard the Son died 1637. leaving only one Daughter, the Defendant Mary: That the Court Rolls are lost, and the Defendant insists, That he in right of his Wife, the Defendant Mary, as Heir at Law to the said Richard Lyford, Senior, is entitled to the Premises, there being no such Surrender or Admittance to be found, and that no such Will was made, or any thing that will make out the Defendants Title. The Court declared they would see Presidents; but then declared, That after 43 years possession they thought it hard that the Plaintiff should be evicted, and Ordered, That the Defendant should admit of a Surrender and Admittance upon payment of Costs, and bring an Ejectment, and the Plaintiff not to insist on his possession to hinder the Tryal. The Court Decreed, to the Plaintiff and his Heirs to enjoy the Land, according to the said Will, and Custom of the Manor.

Relief as to Surrenders, Purchases, Agreements,
Trusts, Rolls lost, and Rents Arrear.

It is Decreed, in the Case of *Greenwood cont. Hare, 18 Car. 2.* That where one was a Copyholder for the Lives of himself and his two Sons, and he paid the Fine, and afterwards covenanted and agreed with the Plaintiffs Father to Surrender his Title and Interest in the Premises, to the Plaintiffs Father, and his Heirs. Copy-holder dies before any Surrender. The Plaintiffs Father dyes; he Exhibits his Bill to have the Premises surrendred according to the Agreement, the Purchase-mony having been paid by the Plaintiffs Father. The Court considering, That by the Custom the Defendants Father could have surrendred all the three Lives; and though it was not a Copyhold in Fee, yet it was decreed, That the Agreement should be performed, and that the Defendant do Surrender to the Plaintiffs Use, and an Injunction for quiet enjoyment.

Defendant decreed to surrender according to an Agreement.

A Woman Copy-holder for Life, took an Husband, and the Reversion of the said Copyhold was granted to three, viz. *A. B. C. cum acciderit*, by Surrender or Forfeiture, for their Lives successive, according to the Custom. The Husband doth Surrender to the Use of *A.* for Life, to whom the Lord doth grant a Copy accordingly. *A.* and *B.* dye, and the Opinion of the Court was, That *C.* hath no right to be admitted by the Law, nor in Conscience; for that after the death of the Husband, the Wife may enter, and have a Plaint in nature of a *Cui in vita contradicere non potest*; and during the Husbonds Life, the Lord may have it in the nature of an Occupancy. But the

The Lord
Decreed to
hold a Court.

Cafe did proceed farther (*viz.*) That the Husband and Wife were willing to release all the Right of the Wife to the surviving Reversioner, and the Lord would not receive it, nor hold a Court. But it was decreed, That the Lord should hold his Court, and accept their Conveyance, or else avoid the Possession thereof, *Dyer 246. a.*

Copy-hold
Estate in some
cases not to
be passed but
by Decree.

Where the Lord grants the Reversion of the Copy-holds, the Tenant cannot Surrender, there being no *Dominus servitiorum* as the Custom will warrant, and he cannot pass his Estate any way, but by a Decree in *Chancery*, and this will bind the person only, 4 *Rep. p. 25.* in *Murrel's Case*, *vide supra.*

Fines and
Rents arrear
not relieved
after Sale of
the Manor.

Copy-hold Tenant in Fee surrenders to the Use of one for Life, Remainder to *B.* in Fee. Tenant for Life dies, and *B.* pays no Fine for his Admittance, but after dies, and this descends to his Son; and after his Son surrenders to the Use of *J. S.* in Fee, and no Fine paid for it, and also the Rents for divers years are behind; and after the Lord grants the Manor in Fee to *J. B.* and after sues in a Court of Equity for the Fines and Rents due before the Sale of the Manor, and alledgeth in his Bill, That the Copy-holder had Free Land intermixed with the Copy-hold Land, so that he could not know where to Distrain for it; yet he shall not be relieved in Equity for this, for it is against a Maxim in Law, for as much as by his own Act he had destroyed his Remedy, *P. 10 Car. B. R. Serjeant Hicham Plaintiff, and Finch and Block Defendants*, and a Prohibition was granted to the Court of Requests, where the Suit was.

Gold versus Dore, Martis 23. Oct. 2 Jac. The Plaintiff delivered to the Defendant an 100 l. to buy a Copy-hold in the Defendants Name, but to the Plaintiffs Use, because there were differences between the Lord of the Manor, and the Plaintiff, so as the Plaintiff had no hopes to prevail for himself; and when the Copy-hold should be obtained, then the Trust was, That the Defendant should Surrender the same to the Use of the Plaintiff. The Defendant accordingly bought the Copy-hold, and took it in his own name, and his Childrens, but afterwards would not surrender it to the Use of the Plaintiff, notwithstanding the same was bought with the Plaintiffs mony; for this the Plaintiff Exhibited his Bill in *Chancery*, and this appearing to be the true state of the Case, my Lord would not relieve the Plaintiff, because he said he would never ground a Decree upon a Lye, a Falsity, it appearing to him that this packing was used to thrust a Tenant upon the Lord, whom he liked nor; and so dismiss the Cause.

Trustee refusing to surrender according to his Trust; not relieved.

Tracy versus Noel, M. 2 Jac. A Copy-holder of Inheritance took a Lease for years of his Copy-hold from the Lord of the Manor; the Lord sold his Manor to *J. S.* who had notice of this Copy-hold of Inheritance; yet would not this Court relieve the Copy-holder, his Lease being ended, for by Law his Copy-hold Estate is determined.

Copy-holder in Fee takes a Lease, the Manor is sold. Copy-holder not relieved, though the Purchaser had notice.

Robes Purchased the Inheritance of a Copy-hold in the Name of *B.* and another in Trust. *B.* surrendred his moiety to the Use of his own Son, and the other died seized. The Son of *B.* and the Heir of the other for mony sold the Copy-hold to *C.* for 50 l. being of the value of 80 l. *Robes* sued the Son of *B.* and

No Recom-
pence for the
over-value of
an Estate, be-
cause no
Fraud.

the Heir of the other, and C. in *Chancery*, for the 80 l. It was decreed, That A. should recover this 50 l. only from B. and the Heir of the other, and C. should be discharged of it, and hold it in peace. But if notice had been proved in C. Robes shall have the Land, and no recompence for the over-value was given against the Vendors, because no Fraud, *Moor Rep. n. 745. Kobes, Bent and Cock's Case.*

Copy-hold de-
vised without
Surrender, ex-
ecuted by De-
cree in *Chan-
cery.*

A Copy-hold devised without Surrender, it cannot be executed in point of Interest, but only by Decree in *Chancery*, by a *Concessum*, in 2 *Keb. 837. Harrison's Case.*

A Copy-hold
granted out of
a Manor, con-
firmed.

A Copy-hold granted at a Court kept out of the Manor, confirmed against the Lord who made it, *Totbil 107. Mark contra Suliard.*

Court Rolls
produced.

In *Corbet and Peshal's Case, 12 Jac.* it was Ordered, That Court Rolls should be brought and shewed to Councel, to shew which is Copy-hold and which is Free-hold.

Composition
Decreed.

Sterling's Case, a Composition formerly made between Lords and Tenants, Decreed to bind a Purchasor or an Heir, 9 *Car.*

Bill in *Chan-
cery* to re-
verse a Faux
Judgment in
the Lords
Court.

If an erroneous Judgment be given in a Copy-hold Court of a common Lord, in a Formedon, a Bill may be exhibited in *Chancery*, in nature of a Faux Judgment, to reverse it, *Pateshull's Case in Scaccario, 1 Rolls Abridgment 373.*

Admission by
Letter of At-
torney. *ought
not to be.*

Copy-holder ought not to be admitted to a Copy-hold Estate by Letter of Attorney, for he ought to do Fealty at the time of his Admittance, which must be done in person, 21 *Car. 2. Flyer and Hedgingham.*

Fines certain,
or not having
been tryed at
Law, no far-
ther Relief
here.

Smith contra Sallet, 24 Car. 2. Fines of Copy-holders whether certain or arbitrary, it having been tryed at Law, and in two Tryals Verdict for Fines certain; This Court would

not

not relieve the Plaintiff, other than for the preservation of Witnesses, and so dismiss the Plaintiffs Bill; it being to have an Issue directed to try whether certain or not.

Morgan versus Scudamore, 29 Car. 2. The Lord was limited to a two years value for a Fine, though the Fines were Arbitrary; and the Custom was to renew but every 99 years; but the Copy-holders decreed to renew their Estates within one year after the Term.

The Lord limited to a two years full value for a Fine,

Barker contra Hill. 33 Car. 2. Upon a Contract for Copy-hold Estate, and Purchase-mony paid, the bargainor dies before Surrender; his Heir decreed to Surrender.

Heir Decreed to surrender upon a Contract with the Ancestor.

Nayler contra Strode, The Surrender of a Copy-hold Estate, by an Infant of 5 years old allowed by this Court.

Surrender by Infant of five years old.

Precedents in Chancery.

A Bill for the quieting the possession of a Copy-holder, where the Copies and Court Rolls are lost, and to have Witnesses examined, *Conveyancers Light*, 258.

A Bill for entring and detaining Copy-hold Lands, by reason of the detaining the Writings thereof, *West's Presidents*, Edit. 1647.

...the ... of the ...

PRESIDENTS, &c.

A Settlement before Marriage of a Copy-hold Estate, where, according to the Custom of the Manor, there is a dead Year after the death of every Tenant, grantable by the Tenant in his Life-time, and his Widow enjoys the Estate, durante castitate, if he surrender or alien it not in his Life-time, with permission, That the Goods of the Wife shall remain at her disposal, and that her Husbands Name may be made use of to sue for her Debts, but the Monies to be secured by the Trustees to her Use.

THIS Indenture Tripartite made, &c. between M. F. of, &c. Widow, late Wife and Relict of E. F. late of, &c. Gentleman, deceased, on the first Party, and T. S. of, &c. Gentleman, on the second Party, and E. L. of, &c. Gentleman, T. B. of, &c. J. B. of, &c. Gentleman, on the third Part. Whereas the said M. is now possessed in a personal Estate of Mony, Debts owing by Bond, and Securities, and otherwise, above the value of 300 l. and of Goods, Chattels and Utensils of Household Stuff, according to the Inventory or Note of particulars hereof, hereunto annexed, expressed. And whereas the said T. S. is now seized

zed in possession of a Copy-hold Estate of Lands and Tenements, for term of his Life, lying and being in S. within the Manor of W. in the said County of, &c. of the yearly value of 40 l. or thereabouts, by vertue of a Copy of Court-Roll, and Grant of the said Copy-hold Premisses, by R. B. then Serjeant at Law, at a Court of the said Manor, of him the said R. B. holden the day in the year, as by the said Copy, under the Hand and Seal of him the said R. B. and subscribed by S. F. his then Steward, appeareth, unto which Copy-hold Premisses there is a dead year belonging, according to the Custom of the said Manor, after the death of the Tenant thereof dying seized in possession, disposible by such Tenant in his Life-time, or else to be enjoyed by his Executors or Administrators. And whereas also by the Custom of the said Manor, the Wife of such Tenant, if she survive him, is to hold and enjoy the said Copy-hold Estate during the time of her Widowhood, keeping her self chaste. And whereas a Marriage is intended to be had and solemnized between the said T. S. and the said M. F. It is agreed between all the said Parties to these presents, and the said T. S. for himself, his Heirs, Executors and Administrators, doth Covenant, Promise and Grant, to and with the said E. L. T. B. J. B. and J. P. and to and with every of their Executors and Administrators, That he the said T. S. shall not and will not surrender, yield up or make void the said Copy-hold Estate, whereby the said M. may be defeated of her Widows Estate, in the same Copy-hold Premisses, after the death of him the said T. S. if the said Marriage take effect, and in case she shall him survive,

vive. And also the said *T. B.* doth hereby Grant to the said *E. L. T. B. J. B.* and *J. P.* and the survivor of them, the dead year of the said Copy-hold Premises, to hold to them and the survivor of them, immediately from and after the death of him the said *T. S.* in Trust for her the said *M.* in case the said Marriage take effect, and she survive him the said *T. S.* And the said *T. S.* doth also Covenant, Grant and agree, to and with the said *E. L. T. B. J. B.* and *J. P.* and to and with every of them, their and every of their Executors and Administrators, That he the said *T. S.* his Executors, Administrators and Assigns, shall not intermeddle with, claim, take or dispose of any other the aforesaid Estate Personal, Mony, Goods or Chattels of the said *M.* saving only the sum of 300 l. in mony, and no more; but that the said *T. S.* shall be contented and satisfied with the aforesaid sum of 300 l. in mony, and no no more, as a full Marriage Portion to him, with the said *M.* if the said Marriage shall take effect. And that the said *M.* shall have full power by her last Will, or otherwise to dispose of all, or any the rest of her Estate, to any other person or persons, other than the said *T. S.* without any contradiction of him the said *T. S.* to hinder or let the same. And the said *M. F.* by and with the consent of the said *T. S.* as well in consideration of, &c. to her paid, by the said *E. D. T. B. J. B.* and *J. B.* or one of them; as also to preserve the Interest and Property of all and singular the Goods, Chattels and Implements of Household, now of her the said *M.* in the Schedule or Note of particulars thereof, hereunto annexed, specified; so that he the said *T. S.* may not have any power or disposal

That he will intermeddle with no more of the Wives Estate then 300 l.

That she may dispose of it by Will, &c.

posaf of them. She the said *M.* hath given, granted, bargained and sold, and doth hereby give, grant, bargain, sell and deliver unto the said *E. L. T. D. J. B.* and *J. P.* their Executors, Administrators or Assigns, all and singular the said Goods, Chattels and Implements of Household, To have and to hold to them, their Executors, Administrators and Assigns, for ever. And the said *T. S.* for himself, his Heirs, Executors and Administrators, doth Covenant, Promise and Grant, to and with the said *E. L. J. B. T. B.* and *J. P.* and to and with every of them, their Executors and Administrators, That whereas she the said *M.* hath divers sums of Mony owing unto her upon Bonds, Specialties, and otherwise, above the sum of 300 l. That for recovery of the said Debts (if need require) he the said *T. S.* shall permit and suffer the Trustees aforesaid, or any Attorney or Attornies, by their appointment, in the Name or Names of them the said *T. S.* and *M.* in case the same Marriage take effect, to commence Suit against, sue and prosecute all and every the person or persons, as occasion shall require, for all every or any the said monies that are now owing to the said *M.* And that he the said *T. S.* shall justifie all and every such Actions and Suits, and shall not Release or discharge the same, or any Judgment or Judgments, or Execution thereupon to be had, without the consent of the said Trustees, but shall suffer the said Trustees to receive the same monies, and every Sum thereof, and all and other the Sum and Sums, above the Sum of 300 l. and to preserve and dispose of the same according to the Trust in them reposed, by the aforesaid *M.* And that the said *M.* shall have full power of the disposal thereof,

The Husband
to permit
Trustees to
make use of
his name to
sue for his
Wives Debt.

That he shall
not release the
Action.

That what is
received shall
be at her dis-
posal.

thereof, to any person or persons, other than the said T. S. without any contradiction of him the said T. S. or any threats or uncivil carriage to deter her thereunto. And it is farther agreed by and between the said T. S. and M. F. That neither of them nor their Estates shall be charged with the Debts or Engagements of either of the other of them, due or payable before the date of these presents. And to that end the said T. S. doth covenant, promise and grant, to and with the said Trustees before named, and to and with every of them, That he will pay and discharge all his own particular Debts, or which he is bound for or stands chargeable to pay, to any person or persons, out of his own particular Estate, without having or craving any of the now personal Estate of her the said M. other than the aforesaid 300 l. before mentioned. And also the said M. F. doth hereby agree, That in case the said T. S. after the said intended Marriage shall take effect and be solemnized, shall be questioned or molested for any the proper Debts of her the said M. contracted or owing by her, before the solemnization of the said intended Marriage, or for any Legacy or Legacies which she is any ways chargeable to pay to any person or person, That the Trustees shall have power and authority hereby to pay and discharge the said Debts and Legacies, which she the said M. is so chargeable to pay, and that out of any her now proper Estate, other than the aforesaid 300 l. and in so doing the Trustees shall be discharged of any other account thereof unto the said M. or to the said T. S. after the solemnization of the said intended Marriage. And the said Trustees and every of them do hereby declare, That they

That neither of the Estates be charged with the others Debts due before Marriage.

If there appear any Debts on her part, Trustees to pay them out of her personal Estate in their Hands.

they will perform the Trust in them reposed by these presents, according to the true intent and meaning thereof. And do hereby Covenant every one of them one with the other respectively, not to act or do any thing touching the Premises, without the consent of them all. *In Witness* whereof to the first part of these presents, remaining with the said T. S. the said M. F. and the said Trustees have put their Hands and Seals; to the second part of these Indentures, remaining with the said Trustees, the said M. F. and T. S. have put their Hands and Seals, to the third part of these Indentures, remaining with the said M. F. the said T. S. and the said Trustees have put their Hands and Seals, the day and year first above written.

Covenant to Surrender Copy-hold Land, after a Bargain and Sale of Free-hold.

And whereas the said I. W. holdeth to him and his Heirs, by Copy of Court Roll, at the Will of the Lord, according to the Custom of the Manor of S. aforesaid, the said Parcel of Land in S. aforesaid, before excepted. It is Covenanted and agreed, by and between the said Parties to these presents, and the said I. W. for himself, his Heirs, Executors and Administrators, for the Considerations aforesaid, doth Covenant to and with the said H. A. R. G. and I. A. their Heirs and Assigns by these presents, That he the said I. W. shall and will before the Feast of St. John Baptist, now next ensuing, surrender according to the Custom of the said Manor, the said Parcels of customary Lands, before excepted, unto the use and behoof of the said H. A. R. G. and I. A. and their

their Heirs for ever, and procure them to be admitted unto the same accordingly, To hold according to the Custom of the said Manor, freed and discharged of all Forfeitures, Charges and Incumbrances, done or suffered by him the said J. W. or F. W. his Father, or either of them, *In Witness, &c.*

Covenant that he is rightfully seized of Copy-hold Land.

And the said A. B. (for the Considerations aforesaid) doth for himself, his Heirs, Executors, Administrators and Assigns, and for every of them, covenant, promise and grant to and with the said I. G. his Heirs and Assigns by these presents, that he the said A. B. now at the sealing and delivery of this, &c. is solely, lawfully and rightfully seized of and in all and singular the said Copy-hold Lands and Premises, herein before mentioned to be granted, with their, &c. Appurtenances, of a good Estate in Fee-simple, according to the Custom of the Manor, of which the same Premises are holden. If the Copy-holds belong to two Manors, then thus—of a good Estate in Fee-simple, according to the Custom of the several Manors, of which the said Premises are respectively holden.

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Hanno.*

Covenant to Surrender Copy-hold Lands.

And also that he the said A. B. or his Heirs, shall and will at the next Court-Baron to be held for the Manor of W. in the said County, &c. or at any other time or times, upon the request of the said I. G. his Heirs or Assigns, but

but at the proper Costs and Charges of the said *A. B.* or his Heirs, surrender into the Hands of the Lord of the Manor, or to the Steward thereof, or otherwise, according to the Custom of the said Manor, to the use of the said *I. G.* his Heirs and Assigns, all those Lands, Tenements, and Hereditaments, herein after mentioned, which he the said *A. B.* doth hold of the said Manor aforesaid, by Copy of Court Roll, according to the Custom of the said Manor, *viz.* one piece of Land, called, &c. And all other the Copy-hold or customary Lands of the said *A. B.* held of the said Manor of *W.*

And the said *A. B.* for himself, &c. doth farther Covenant, &c. to and with the said *I. G.* his Heirs and Assigns, &c. that he the said *A. B.* his Heirs, Executors or Administrators, shall and will pay the Fines due for Admittances of the said *I. G.* or his Heirs, into the said Copy-hold Lands, unto the Lords of the said Manors respectively.

And that he the said *A. B.* and his Heirs from time to time, and at all times hereafter, within the space of seven years next ensuing the date hereof, &c. at and upon the reasonable Request, and proper Costs and Charges in the Law, of the said *I. G.* his Heirs or Assigns, shall and will make and do all and every such farther and other lawful and reasonable acts and things, for the farther, better and more perfect assuring and conveying all and singular the said Copy-hold Lands and Tenements, and all other the Copy-hold Lands of the said *A. B.* in the County of *S.* to, or to the Use of the said *I. G.* his Heirs or Assigns, or by his or their Council learned in the Law, shall be reasonably devised or advised and required. And that at the time of such Surrender

der or Surrenders, or other Assurance or Assurances to be made of the same Copy-hold Lands and Premisses, all and singular the said Copy-hold Lands and Premisses, so to be surrendred or otherwise conveyed as aforesaid, shall be free and clear, and freely and clearly and absolutely acquitted, freed and discharged of and from all former Surrenders and Forfeitures, and other Incumbrances whatsoever, had, made, done, or wittingly and willingly suffered by him the said *A. B.* or by any other person and persons whatsoever, one Lease made by the Licence of the Lord of the Manor aforesaid, to *K. F. &c.* of *&c.* of one Copy-hold Messuage, *&c.* excepted.

A Covenant (in nature of a Mortgage) upon a Surrender of Copy-hold Land, to pay money at a certain time.

This Indenture made, *&c.* between Sir *T. D.* of *P. &c.* of the one part, and *I. H.* of, *&c.* of the other part, Witnesseth, That whereas the said Sir *T. D.* hath now lately surrendred into the Hands of the Lord or Lords of the Manor of *W.* in the said County of *S.* by the Rod, according to the Custom of the said Manor, by the Hands and acceptanc of *R. C.* and *E. M.* two of the customary Tenants of the said Manor, all that Messuage, *&c.* To the Use of the said *I. H.* his Heirs and Assigns, to hold according to the Custom of the said Manor, with a proviso, and upon condition, That if the said Sir *T. D.* his, *&c.* shall and do well and truly pay or cause to be paid, *&c.* at, *&c.* then the said Surrender to be void and of none effect, as by a Note or Memorandum of the said Surrender taken out of the

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Court

*This hold out
of Orland
103*

Court, the day of the date hereof, (relation, &c.) more plainly appeareth.

Now the said Sir T. D. doth for himself, his Heirs, Executors, and Administrators, Covenant, &c. to and with the said I. H. his Executors and Administrators, by these presents (to pay the Mony) at the day and place, and in manner and form in the said Proviso or Condition of the said Surrender before recited, limited and appointed for the payment thereof.

And farther also, That the said Sir T. D. at the time of the making of the said Surrender before recited, had a good Estate of Inheritance in Fee-simple, according to the Custom of the said Manor of W. of and in all and singular the said Messuages, &c. before mentioned to be surrendered; and had good right, and lawful and absolute power and authority in himself to surrender the same, and every part thereof, unto the said I. H. and his Heirs in manner and form aforesaid; and that the same are free from all former Surrenders and Incumbrances whatsoever.

In default of payment, I. H. and his Heirs to enjoy the Premises for ever.

After default in payment, Sir T. D. covenants for farther Assurance — be it by Fine or Recovery, according to the Custom of the said Manor, Surrender, Release or Confirmation, or all or any of the said wayes or means in the Law whatsoever, as by the said I. H. his Heirs or Assigns, or his or their Council learned in the Law, shall be reasonably devised, advised or required.

Till default of payment I. H. to permit and suffer Sir T. D. to enjoy, &c.

*Or to pay
the money*

And in fee

A Bargain and Sale of Copy-hold Lands, by Commissioners of Bankrupts.

This Indenture, &c. Between A. B. &c. the Commissioners of the one part, and C. D. &c. (Assignees) of the other part. Whereas the King and Queens Majesties Commission under the Great Seal of England, grounded upon the several Statutes made concerning Bankrupts, bearing date at Westminster, the day of, &c. last past, hath been awarded against E. F. of, &c. and directed to the said Commissioners thereby giving full power and authority unto the said Commissioners, four or three of them, whereof the said A. B. and P. B. to be one to execute the same, as by the said Commission more at large appeareth. And whereas the Commissioners, parties to these presents, or the major part of them, or the major part of the Commissioners, by the said Commission authorized, having begun to put the said Commission in Execution, upon due examination of Witnesses and other good proof, and upon Oath before them taken, do find, That the said E. D. hath for the space of six years last past, or thereabouts, used and exercised the Trade and profession of a, &c. in buying and selling of, &c. at his House and Shop in S. aforelaid, and sought and endeavoured to get his living by buying and selling. And that the said E. F. so seeking and endeavouring to get his living by buying and selling during the time of his said Trading, did become justly and truly indebted, and still doth owe and stand indebted unto the above-named C. D. and other his Creditors, in the sum of, &c. and being so indebted, he the said E. F. did in the judgment of

the said Commissioners, parties to these presents, become Bankrupt to all intents and purposes, within the compass, true intent and meaning of several Statutes made concerning Bankrupts, or within some or one of them, before the date and suing forth the said Commission. And whereas also the said Commissioners, parties to these presents, or the major part of the Commissioners by the said Commission authorized, having also found out and discovered that he the said *E. F.* at the time and since he became Bankrupt, was and stood seized to him and his Heirs, according to the Custom of the Manor of *L.* in the County of *L.* of and in, &c. All which Copy-hold or customary Premises, the greater part of the above-named Commissioners by the said Commission authorized, have caused to be viewed and rented, and the same to be appraised to the best value they can or may, and accordingly the same have been viewed, rented and appraised by *R. S.* and *T. V.* men of sufficient skill and ability for the doing thereof. in manner and form following (that is to say) &c. as by the particular appraisment sent to the said Commissioners, it may appear, the value whereof in the total amounts to the sum of, &c.

Now this Indenture witnesseth, That the said Commissioners, parties to these presents, by force and vertue of the said Commission, and of the several Acts of Parliament therein mentioned and expressed, for and with the consent, and at the request of the Creditors of the said *E. F.* that have sued forth and prosecuted the said Commission against the said *E. F.* for and in consideration of the sum of, &c. unto the said Commissioners, by the said *C. D.* &c. to the use, benefit and behoof, as well

well of themselves, as also of all other the Creditors of the said *E. F.* that have sued forth and joyned, and that shall hereafter in due time joyn in the prosecution of the said Commission, according to the Statutes in that behalf made and provided, well and truly contented and paid, have by force and virtue of the said Commission, as much as in them the said Commissioners lyeth, and they lawfully may, granted bargained and sold, and by these presents do as much as in them lyeth, and they lawfully may, grant, bargain and sell unto the said *C. D. &c.* all the aforesaid Copy-hold or customary Messuage, &c. now in the occupation of, &c. holden by Copy of Court Roll of the aforesaid Manor of *W.* together with all Woods, Under-woods, Commons, Pastures, &c. and Appurtenances whatsoever, unto all and every the said Copy-hold or other customary Premisses thereby granted, and every part and parcel thereof belonging or in any wise appertaining, and all the Estate, Right, Title, Interest, Use, Possession, Reversion and Reversions, Remainder and Remainders, Claim and Demand whatsoever, of the said *E. F.* of, in and to all and singular the Premisses hereby granted, and every part and parcel thereof, To have and to hold all the said Copy-hold or customary Messuage or Tenement, &c. with their and every of their Appurtenances, to their proper use and behoof, for ever, according to the Custom of the said Manor of *L.* Yeilding, paying, performing and doing unto the said Lord of the aforesaid Manor, of whom the Copy-hold or customary Premisses, hereby granted, are holden, all and every the Fines, Rents, Duties and Services, of right used and accustomed to be yeilded,

paid, performed and done for the same, &c.
In Witness, &c.

*A Surrender in Trust, and the Trust declared:
Trustees, Covenant not to commit, &c. any thing
that may amount to a Forfeiture.*

Whereas the said *A. B.* hath with his own proper Monies bought and purchased of *C. D.* of, &c. Lord of the Manor of *Belton*, in the County of, &c. (amongst other Lands and Tenements, in certain Articles indented and made between the said *C. D.* of the one part, and the said *A. B.* of the other part, and bearing date the, &c.) the customary Messuage, Lands, Tenements and Hereditaments, hereafter mentioned, that is to say, &c.. And whereas also the said *E. F. G. H.* and *I. K.* customary Tenants of the said Manor of and in the customary Messuage, Lands and Premises, did by Surrender bearing date, &c. according to the Custom of the said Manor, surrender into the Hands of the said *C. D.* Lord of the Manor aforesaid, all and singular the customary Messuage, Lands, Tenements and Hereditaments before mentioned, to the use and behoof of them the said *I. S.* and *P. S.* their Heirs and Assigns, to the intent and purpose that the said *C. D.* or other the Lord or Lords of the said Manor of, &c. or the Steward or Stewards of the said Manor for the time being, at the next Court to be holden for the said Manor, should admit or cause to be admitted them the said *I. S.* and *P. S.* Tenants of and to all and singular the said, &c. as by the said Surrender, relation being thereto had, may more at large appear. Now this Indenture farther Witnesseth, That the said *I. S.* and *P. S.* for the avoiding
and

and clearing all doubts, questions and ambiguities which may hereafter arise or grow, touching or concerning the said Surrender taken in their Names, as aforesaid, do, and either of them doth by these presents voluntarily and spontaneously acknowledge, express and declare, That the said Surrender so had and taken as aforesaid, was had, taken, passed and done by the special direction and appointment of the said *A. B.* in trust to and for the only use, benefit and behoof of him the said *A. B.* his Heirs and Assigns for ever, and to and for none other use, intent or purpose whatsoever. And farther the said *J. S.* and *P. S.* do for themselves, their Heirs and Assigns, freely and absolutely disclaim any other Estate, Right, Title, Interest, Claim or Demand, of, in, to, or out of the said customary Messuage, Lands and Tenements, and Premises, or any part thereof, but such only as they have by virtue of the Surrender aforesaid, in and upon the Trust aforesaid. And the said *I. S.* and *P. S.* for themselves, their Heirs, Executors and Assigns, do covenant and grant, to and with the said *A. B.* his Heirs, Executors and Assigns, that they the said *I. S.* and *P. S.* their Heirs or Assigns, shall not and will not at any time or times hereafter, act, do, permit, or willingly or wittingly suffer any act, matter or thing whatsoever, that may amount to or cause a Forfeiture of the said Premises, or any part thereof, or whereby the said Premises or any part thereof may be destroyed, extinguished, impeached or incumbered. *In Witness, &c.*

*An Infranchisement of Copy-hold Lands made by a
Lord of a Manor to his Copy-holder.*

This Indenture made, &c. Between *A. B.* of, &c. Esquire, and *E. B.* of, &c. Gentleman, Son and Heir apparent of the said *A. B.* Lord of the Manor of *H.* in the County of *Norfolk*, of the one part, and *T. P.* of, &c. *R. S.* of, &c. and *T. P.* of, &c. of the other part, *Witnesseth*, That the said *A. B.* and *E. B.* as well for and in consideration of the sum of, &c. of lawful mony to them the said *A. B.* and *E. B.* or one of them in hand paid, by the said *T. P.* *R. S.* and *T. P.* at and before the enfealing and delivery of these presents, the receipt whereof they the said *A. B.* and *E. B.* do by these presents acknowledge, and thereof, and of every part and parcel thereof, do acquit, exonerate and discharge the said *T. P.* *R. S.* and *T. P.* and every of them, their and every of their Heirs, Executors and Administrators, for ever by these presents, as also for divers other good Causes and Considerations, them, and either of them hereunto especially moving, Have granted, bargained, sold, enfeoffed, delivered, aliened and confirmed, and by these presents do grant, bargain, sell, enfeoff, deliver, alien and confirm unto the said *T. P.* *R. S.* and *T. P.* their Heirs and Assigns, all those Messuages, Cottages, Lands, Tenements, Pastures, Feedings and Hereditaments whatsoever, situate, lying and being in *K.* and *S.* or any other Town, in the said County of *Norfolk*, which are Copy-hold or customary Lands, holden of the Manor of *H.* within the said County of *Norfolk*, and which the said *T. P.* holdeth by Copy of Court-Roll of the Manor aforesaid, or
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of right ought to hold as Copy-hold, or of some customary Tenure of the said Manor of *H.* or of the Lord or Lords thereof, or of any other Manor or Lordship, now or late of the said *A. B.* and *E. B.* or either of them; and the Free-hold of all and singular the said Messuages, Cottages, Lands, Tenements, Pastures, Feedings and Hereditaments whatsoever, with the Appurtenances; and also all the Freehold of the Inheritance of all those Copy-hold and customary Messuages, Cottages, Lands, Tenements and Hereditaments whatsoever, which were surrendered lately by *J. G.* unto the use of the said *T. P.* and his Heirs; and also all such Rents and Arrearages of Rents, Services, Suits, and other Demands whatsoever, which now or at any time heretofore have been due or payable, or that shall or ought to be hereafter due, payable or done, for all or any of the said Messuages, Cottages, Lands, Tenements, Pastures, Feedings and Hereditaments whatsoever; all which said Messuages, Cottages, Lands, Tenements, Pastures, Feedings and Hereditaments, with the Appurtenances, were late in the occupation of, &c. and the Reversion and Reversions, Remainder and Remainders of all and singular the Premises; all Rents and Reservations reserved or payable, by or upon any Demises, Leases or Grants heretofore made or granted of the said Premises, or any part or parcel thereof. *To have and to hold* all and singular the said Messuages, Cottages, Lands, Pastures, Feedings and Hereditaments, and all and singular the above-mentioned or intended to be hereby granted and bargained Premises, with their and every of their Appurtenances, unto the said *T. P. R. S.* and *T. P.* their Heirs and Assigns, to the only proper

proper and absolute use and behoof of them the said *T. P. R. S.* and *T. P.* their Heirs and Assigns for ever; and the said *A. B.* and *E. B.* for themselves and every of them, their and either of their Heirs, Executors and Administrators, and every of them, do covenant and grant to and with the said *T. P. R. S.* and *T. P.* their Heirs, Executors and Assigns, and every of them, by these presents, in manner and form following, That is to say, that they the said *A. B.* and *E. B.* or one of them, are or is at the time of the sealing and delivery of these presents, lawfully, jointly or solely seized in their or one of their Demesnes, as of Fee, of and in the said Manor of *H.* and of and in all and singular the said bargained Premises, and every part and parcel thereof, with the Appurtenances, of a good, perfect and absolute Estate of Inheritance, in Fee-simple, without, &c. and unto the use of them, or one of their Heirs and Assigns, without any manner of Condition, power of Revocation, Limitation of Use or Uses, Trust, or other matter or thing whatsoever, to alter, change, charge, incumber, impeach, determine or make void the same. And that they the said *A. B.* and *E. B.* or one of them, have or hath at the time of the sealing and delivery of these presents, and at the time of the execution of the first Estate hereby to be made and granted, shall have full Power, good Right, and lawful Authority, to Grant, Bargain and Sell all and every the said Messuages, Cottages, Lands, Tenements, Pastures, Feedings, Hereditaments and Premises before-mentioned, to be hereby granted, bargained and sold, with their and every of their Appurtenances, unto the said *T. P. R. S.* and *T. P.* their Heirs and
 Af-

Assigns, in manner and form aforesaid and according to the effect of these presents. And also that all and every the said afore-mentioned to be hereby granted and bargained Messuages, Cottages, Lands, Tenements, Pastures, Feedings, Hereditaments and Premisses, and every part and parcel thereof, now are, and at all times hereafter shall and may be remain and continue unto the said *T. P. R. S.* and *T. P.* their Heirs and Assigns, and every or any of them, free and clear, and freely and clearly acquitted, exonerated and discharged, or otherwise upon reasonable request, well and sufficiently saved and kept harmless and indemnified, by the said *A. B.* and *E. B.* their Heirs, Executors, or Administrators, or some or one of them, of and from all and all manner of former and other Gifts, Grants, Bargains, Sales, Estates, Wills, Entails, Alienations, Joyntures, Right and Title of Dower, Statutes, Merchant, and of the Staple, Judgments, Executions, Rents, arrearages of Rents, Mortgages, and of and from all other Charges, Titles, Claims and Incumbrances whatsoever. And farther the said *A. B.* and *E. B.* for themselves, their Heirs, Executors, Administrators and Assigns, and for every of them, do covenant and grant to and with the said *T. P. R. S.* and *T. P.* their Heirs, Executors and Administrators, and every of them by these presents, That they the said *A. B.* and *E. B.* and either of them, their and either of their Heirs and Assigns, lawfully having, claiming or pretending to have, or which hereafter shall or may lawfully claim, or pretend to have any Estate, Right, Title, Interest, Claim or Demand, of, in or to the said bargained Premisses, or of, in or to any part or parcel thereof, by, from or under them
the

the said *A. B.* and *E. B.* or either of them, their or either of their Heirs and Assigns, shall and will from time to time, and at all times hereafter, at the reasonable request, costs and charges in the Law of the said *T. P. R. S.* and *T. P.* their Heirs and Assigns, make, do, acknowledge or cause to be made, done, executed, acknowledged and suffered, all and every such farther act and acts, thing and things, devise and devises, assurances and conveyances in the Law whatsoever of the said Premises, as by the said *T. P. R. S.* and *T. P.* their Heirs or Assigns, their or any of their Counsel Learned in the Law, shall be reasonably advised or required, be it by Fine or Feoffment, Deed, or Deeds Inrolled or not Inrolled, Recovery or Recoveries with single, double, or more Voucher or Vouchers, or by any other lawful ways or means whatsoever, for the better assurance and sure making of the said bargained Premises, and every part and parcel thereof, with their and every of their Appurtenances, unto the said *T. P. R. S.* and *T. P.* their Heirs and Assigns for ever, &c.

~~A Letter of Attorney to deliver seisin.~~

A Lease of Copy-hold Land, with the Lords Licence recited.

This Indenture, &c. Between A. B. of, &c. of the one part, and C. D. of, &c. of the other part, Witnesseth, That the said A. B. by virtue of a Licence, before the sealing and delivery of these presents, by him procured and obtained of and from E. F. Lord of the Manor of W. in the County of S. for the granting and letting to Farm, the Tenements. &c.
here-

hereafter in and by these presents demised to the said C. D. according to the tenor and true meaning of these presents, Hath demised leased and to farm let, and by these presents doth demise, lease, and to farm let, unto the said C. D. &c. all, &c. To have and to hold the said, &c. with their and every of their Apputances unto the said C. D. his Executors, Administrators and Assigns, from the, &c. for and during the term, and unto the full end and term of, &c. from thenceforth next ensuing and fully to be compleat and ended, Yielding and paying therefore yearly and every year, during the said term, unto the said A. B. his Heirs and Assigns, the yearly Rent or Sum of 3 s. of, &c. at, &c. (with clause of Distress, &c.) and usual Covenants to repair, &c. And also the said C. D. for himself, his Executors, Administrators and Assigns, and every of them, doth covenant, promise and grant to and with the said A. B. his Heirs, Executors and Assigns, That he the said C. D. his Executors nor Assigns, nor any of them shall do, or wittingly or willingly permit or suffer any act, matter or thing whatsoever, which may forfeit, lose, or impair the Estate or Interest of the said A. B. of, in or to the said hereby demised Premises, or of, in or to any part or parcel thereof, or which may be otherwise hurtful or prejudicial to the said A. B. his Heirs or Assigns, for or concerning the having, holding or enjoying of the same, or any part thereof. And the said A. B. for himself, his, &c. doth covenant and grant, to and with the said C. D. his Executors and Assigns, that he the said C. D. his Executors and Assigns, under the payment of the said yearly Rent, and performance of the Covenants and Agreements aforesaid, which on his and their

parts

parts and behalfs are and ought to be performed, shall and may quietly and peaceably have, hold and enjoy all and singular the before-mentioned to be hereby demised Premises, and every part and parcel thereof, during the term hereby demised, without any interruption, molestation or eviction of him the said *A. B.* his Heirs and Assigns, or of any person or persons whatsoever, now lawfully claiming, or that shall or may hereafter lawfully claim any Estate, Right, Title or Interest, of, in or to the same, or any part thereof, by, from or under him, them, or any of them. And also that he the said *A. B.* his Heirs, Executors and Assigns, or some or one of them, shall and will from time to time, and at all times hereafter discharge, or upon reasonable request save harmless and keep indemnified the said *C. D.* his Executors and Assigns, of, for and from all Quit-Rents, payments, Duties and Services to be had, paid, made or done, for or out of the said hereby demised Premises, or any part thereof, to the said *E. F.* Lord of the Manor aforesaid, his Heirs and Assigns.

A Release of a Copy-hold Estate. n. m. d. d.
By 2. f. 2.

To all Christian people to whom these presents shall come, *A. B.* of, &c. and *C. B.* of, &c. Brother of the said *A. B.* send Greeting, Whereas the said *A. B.* is or was seized for and during the term of his natural Life, according to the Custom of the Manor of *W.* in the, &c. of and in one Copy-hold Messuage, or Tenement, with the Appurtenances in *W.* aforesaid, being parcel of the said Manor, late in the Tenure or Occupation of, &c. deceased, and of and in several parcels of Land, Meadow

dow and Pasture, to the same belonging, or reputed part thereof. And whereas the said C. B. hath a Copy-hold Estate for the term of his Life, in the said Messuage and Premises, in Reversion, after the death of the said A. B. as by the Court Rolls of the said Manor of W. more at large appeareth. Now know ye therefore, That the said A. B. and C. B. for and in pursuance of an Agreement heretofore made and concluded, between the said A. B. E. F. Esq; Lord of the said Manor of W. of and for the said Copy-hold Estate, and for and in consideration of the Sum of, &c. of lawful mony of England, by him the said E. F. in hand paid, to the said A. B. and C. B. or one of them, before the sealing and delivery hereof, the receipt whereof they do hereby acknowledge, and for other good causes and considerations them hereunto moving, have granted, yielded up, surrendered, remised, released and quit claimed, and by these presents they the said A. B. and C. B. do, and either of them doth grant, yield up, surrender, remise, release and for ever quit claim unto the said E. F. and unto F. C. of, &c. and to their Heirs, Executors and Administrators for ever (which said E. F. and F. C. are, or one of them now is, Lord of the said Manor of W. and are, or one of them now is in the actual possession of the said Premises) their said several and respective Copy-hold Estates in the said Messuage, Lands and Premises, and in any part or parcel of the same, and all their and either of their Estate, as well Free-hold as Copy-hold, Right, Title, Interest, Possession, Claim and Demand whatsoever, either in Law, or Equity, or according to the Custom of the said Manor, or otherwise howsoever. And the

*Attest for
further Assurances*

the said *A. B.* and *C. B.* do for themselves, their Heirs, Executors and Administrators, covenant and grant to and with the said *E. F.* and *F. C.* their Heirs, Executors and Administrators by these presents, that they the said *A. B.* and *C. B.* shall and will from time to time, and at all times hereafter, upon request, and at the Costs and Charges in the Law of the said *E. F.* and *F. C.* or either of them, do and perfect, or cause to be done and perfected, all such lawful and reasonable acts and things in the Law, for the surrendring, barring, and extinguishing of their or either of their Right and Estate, as well Free-hold as Customary, and all their or either of their Claim or Demand, in or to the said Messuage or Tenement and Premises, or any of them, as by them the said *E. F.* or either of them, their or either Heirs or Assigns, of the said Manor, shall be reasonably advised and required, in
Witness, &c.

Copy of a Court Roll, or an Extract of a
Surrender out of the Rolls of the Court.

Ad curiam Baronum F. R. Episcopi & Baronum,
Domini maneris preb ibis tent die Lune
videlicet secundo die Junij Anno Domini
millesimo septingentesimo nonagesimo Annorum
Regni Domini Gulielmi & Mariæ,
Dei gratia Angliæ, Scotiæ, Franciæ & Hi-
bernæ Regis & Regine fidei defensor, &c.
primo coram S. C. Armo Senescallo ibid/
[Irrotulatur sic.]

Ad hanc curiam venit A. B. unus cultum te-
nen Maneris preb in propria persona sua & sur-
sum reddidit in manus Domini per manus Se-
nescalli sui preb secundum consuetudinem Maneris
preb unum messuagium sive tenementum & decem
acras pasture cum pertinentiis in A. preb infra Ma-
nerium preb ad opus & usum C. D. heredi &
assignat suorum imperpetuum. Cui Dominus
per senescallum preb concessit inde seisinam, per
virgam habens sibi & heredibus suis Tenens de Do-
mino per virgam ad voluntatem Domini secun-
dum consuetudinem maneris preb per redditus &
servitia inde prius debet & de jure consuevit. Et
dat Domino de fine pro ingressu suo inde ha-
bens quadraginta solidis fecit fidelitatem & admis-
sus est tenens.

Another form according to Littleton.

Ad hanc curiam venit A. de B. & sursum red-
didit in ead curia unum messuagium, &c.
in manus Domini ad usum C. de D. & heres-
dum suorum (vel heredi de corpore suo exun-
tium vel p termino vite, &c.) Et super
A 2 hoc

Prædictis, &c.

hoc venit prædictus C. de D. & cepit de Do-
mino in eas curia messuagii prædicti, &c. Pa-
bondum & tenendum, sibi & heredibus suis
(vel sibi & heredi de corpore suo exsistentibus
vel sibi ad terminum vite, &c. Ad vo-
luntatem Domini secundum consuetudinem ma-
neris faciendo & reddendo inde redditus ser-
vitutis & consuetudines inde prius debita &
consuetas, &c. Et dicit Dominus p. sine, &c.
Et fecit Domino fidelitatem, &c.

Ad hanc curiam H. H. filius & heres W. H.
defuncti sursum reddidit in manus Domini Pa-
neris prædicti per Senescallum prædicti totum, &c.
ad usum prædicti H. p. termino vite sue, & post ejus
decessum ad usum W. H. & heredibus suis per
se & corpore Mariæ tunc uxoris sue legitime pro-
creat sive procreand. Et p. defectu talis exitus
ad usum rectorum heredum, &c. Et superinde
ad istam eandem curiam venerat prædicti H. H. &
W. H. in propriis personis suis et petunt se inde
admitti tenentes, unde Dominus prædicti per Se-
nescallum suum prædicti secundum consuetudinem
Maneris prædicti concessit eisdem H. H. & W. H.
eas tenementa cum pertinentiis habens & tenens
eas tenementa cum pertinentiis eis H. pro &
durante vita sua naturali. Et post ejus deces-
sum eis W. & heredibus suis per se & corpore
Mariæ tunc uxoris sue legitime procreat sive
procreand. & p. defectu talis exitus rectis, &c.
imperpetuum secundum consuetudinem Maneris prædicti
& redditus Heriot scilicet curie consueti & servitia
inde prius debiti & de jure consueti & sic iidem
H. & W. admissi sunt inde tenentes & debere Do-
mino de fine p. tali ingressu suo sic inde habens
quatuor libras & fecerunt Domino fidelitatem
Dat. sub Sigillo Senescalli prædicti die & Anna
supradicto. Per me S. E. Senescal

Sur-

Surrender of Copy-hold Lands for Life, the
Remainder in Fee, taken by the Steward out
of Court.

An hanc Curiam Testatum est per A. H.
Seneschallum Curie. Pdict quod primo die Maij
Anno Regni dicti Domini Regis nunc tricesimo
A. B. gen[er] faciens in extremis lursum redidit
in manus Domini, per manus dicti Seneschalli
extra curiam in p[re]sentia E. F. G. H. & J. K.
secundum consuetudinem manerij pdict unum,
&c. infra maner pdict vocat Nocks Farm, ad
opus & usum E. uxoris ejusdem E. remanere inde
S. T. & U. W. filiis natu minoribus pdict A. B. &
& heredi suis p[ro]visio tamen semper & sub hac con-
dicione q[uo]d si contingat aliquod pdictor[um] S. & V. obire
sine heredibus de corpore suo exund quon tunc ipse
qui superhixerit habebit & gaudebit pdict, &c.
Et cetera p[re]missa p[ro]p[ri]a cum p[er]tinentiis sibi & he-
redibus suis imperpetuum & sup[er] hoc venit h[ic]
in cur p[ro]p[ri]a p[er]sona sua & p[er]t[in]e-
se admitti ad, &c. Et cetera p[re]missa p[ro]p[ri]a cum
p[er]t[in]entia cui Dominus per Seneschallum suum con-
cessit inde per virgam leishnam habens sibi in
forma p[ro]p[ri]a ad voluntatem Domini secundum
consuetudinem manerij pdict. Et dat Domino de
fine p[er] ingressu suo inde habens viginti solidos fe-
cis fidelitatem & admissus est inde tenens,

*To 2: ym. for some
on Land of other
Dyed up whole for
god hold in v. r. or*

A Surrender out of Court of a Reversion to the use of a Man and his Wife, and the Heirs of the Body of the Husband, the Remainder to the Heirs of the Body of the Wife, the Remainder to the Husband of the present Tenant for Life in Tayl, the Remainder to the present Tenant for Life in Tayl, the Remainder to another in Fee, with the Lords acknowledgment of a satisfaction of a Fine; the Surrenderor surrendreth all his Right, &c. to the Husband and Wife, the present Tenant for Life, to the Uses aforesaid:

*Sur taken by
the Steward in
the name of the
Surrenderor*

Reverend

Ad opus

in p[re]sentia

*to the Hon[or] of the
Body of the wife*

Ad hanc curiam Testatum est per predictum T. P. Senescallum ibid quod, &c. die, &c. Anno, &c. T. J. venit coram prefato Senescallo in propria persona sua & sursum reddidit in manus Domini per manus dicti Seneschalli extra cur in presentia L. D. C. K. & J. T. secundum consuetum manerij predicti reversionem unius Messuagij sive Tenementi sexdecim acras prati, &c. ac reversionem duorum Cottagiorum, &c. cum pertinentiis in, &c. infra manerium predicti. Ad opus & usum D. T. & K. Uxor ejus & hereditibus de corpore predicti D. legitime procreat cum post mortem cujusdam A. modo Uxor H. J. acciderint. Et pro defectu talis exitus de corpore predicti D. T. legitime procreat remanere inde prefat K. Uxori prefat D. et hereditibus de corpore ejusdem K. legitime procreat & pro defectu talis exitus remanere inde prefat H. J. & heres de corpore suo Legitime procreat & pro defectu talis exitus remanere inde prefato A. Uxori predicti J. H. & hereditibus de corpore ejusdem A. Legitime procreat & pro defectu talis exitus remanere inde V. S. & hereditibus suis

im.

imperpetuum Quibus, quidem D. T. & K. Wro-
 ejus Dominus per Benescallum suum pdict Dond
 ad hanc curiam concessit inde per virgam sciss-
 nam habens & Tenens pdict Melluagium Cottas
 & cetera premissa pdict cum pertind in reverb-
 sione secundum consuetudinem Panerii pdicti cum post
 mortem pdict A. Wrois pdict H. J. acciderint
 prefat D. & K. Wrois ejus & heredibus de cor-
 poris pdict D. Legitime procreat & pro defectu
 talis exitus remanere inde prefato K. Wrois pre-
 fat D. & heredibus de corpore ejusdem K. Le-
 gitime procreat & pro defectu talis exitus re-
 manere inde prefat H. J. & heredibus de cor-
 pore suo Legitime procreat & pro defectu talis
 exitus remanere inde prefat A. Wrois pdict H. J.
 & heredibus de corpore ejusdem A. Legitime
 procreat & pro defectu talis exitus remanere inde
 prefat V. S. & heredibus suis imperpetuum ad vo-
 luntatem Domini secundum consuetudinem Pa-
 neris pdict p reddit & servitia inde prius debet
 & de jure consuet Et pdict D. & K. W. ejus
 dant Domino de fine pro tali statu suo inde ha-
 bens centum solid & admissi sunt inde tenentes
 modo & forma predict & predict Dominus con-
 cessit se satisfact de predicto fine inde habens
 p Melluagio Cottagiis & ceteris premissis pre-
 dict cum pertind de predict D. & K. Wrois ejus
 cum predict Melluagio Cottagia & cetera pre-
 missa pdict cum pertind post mortem predict A.
 Wrois predict J. H. ad manus sua devenerint
 Et postea ad hanc curiam venit predict F. J. in
 propria persona sua & hic in plena curia suum
 reddidit in manus Domini tota ius titulu cla-
 mem & interesse sua in omnibus predict Mel-
 luagio Cottagiis & ceteris premissis cum per-
 tind ad usus predict & ulteris remisit relaxavit
 & omnino p se & heredibus suis quiet clamavit
 prefat H. J. & A. Wrois ejus totum susticulum

in reverb
post mortem

ad fin
admissi sunt

modos infer

H. J. A. & D.
A. & D. & D.
Thm & D. & D.

clameum interesse & demanūs sua que ipse T. J. unquam habuit in predicto Messuagio Cottagis & ceteris premissis predicti cum p̄m̄ habendū & tenendū omnia & singula predicti Messuagium & Cottagis & cetera premissa predicti cum p̄m̄ p̄fat H. & J. uxori ejus p̄ termino vite predicti A. & post decessum ejusdem A. remanere omnino predicti terrarū & tenementorū cum p̄m̄ p̄fat D. T. & K. uxori ejus & heredibus de corpore predicti D. Legitime procreat & p̄ defectu talis exitus remanere inde p̄fat K. uxori predicti D. & heredibus de corpore ejusdem K. Legitime procreat & p̄ defectu talis exitus remanere inde p̄fat H. J. & heredibus de corpore predicti H. J. Legitime procreat & p̄ defectu talis exitus remanere inde p̄fat A. uxori predicti H. J. & heredibus de corpore ejusdem A. Legitime procreat & p̄ defectu talis exitus remanere inde p̄fat V. S. & heredibus suis imperpetuum ad voluntatem Domini secundū consuetudinem manerii predicti, &c.

After abatement and intrusion the Lord seizeth the Lands, and grants them to the Abator for term of Life, Remainder to the next Heir of the Disseisee and in Tayl, Remainder in Fee.

Comperitū est p̄ homagium ibid quod quidam O. B. Miles defunctus tenuit de Domino hujus Manerii die quo obiit sibi & heredibus suis ad voluntatem Domini secundum consuetudinem Manerii predicti unum Messuagium, &c. cum p̄m̄ in A. predicti infra Manerium predicti & quod predicti O. obiit de tali statu suo inde secessit p̄ sex annos sem ultimo elapsos & amplius & quod quidam H. R. in iure uxoris sue quondam uxoris L. B. Acum sibi predicti O. B. immediate post decessum predicti O. B. in predicto Messuagio, &c. & cetera premissa

quomodo &c.

missa dicta cum p[re]s[ent]i abbatib[us] intrabit & intru-
 sit super possessione D[omi]ni Panerii p[re]dicti in ex-
 heredatatione dicti D[omi]ni Panerii p[re]dicti succes-
 sor[um] suorum & contra consuetudinem Panerii sui p[re]dicti
 a tempore cuius contrarius meom[en]tia homin[um] non
 existit in eod[em] Panerio usitat[ur] & approbat[ur] & exis-
 tit & p[re]s[ent]ia inde a tempore mortis p[re]dicti O. B.
 ad suum p[ro]p[ri]um usum hucusq[ue] habuit & percepit
 non capiens p[re]dict[ur] Messuag[um] &c. & cetera p[re]missa
 p[re]dicti cum p[re]s[ent]i extra manus D[omi]ni Panerii p[re]s-
 dicti nec fecit inde D[omi]no sine p[er] eisdem secun-
 dum consuetudinem Panerii sui p[re]dicti & sic p[re]dicti
 H. R. tenuit & occupabit p[re]dict[ur] Messuag[um] & per
 p[re]dict[ur] sex annos ult[er]i[us] elapsos & amplius contra
 consuetudinem Panerii p[re]dicti. Ideo p[re]ceptum est bal-
 livo Panerii p[re]dicti seiscire in manus Domini
 p[re]dicti Messuag[um] &c. & cetera p[re]missa p[re]dicti cum
 p[re]s[ent]i quousque, &c. Et Dominus modo habens
 inde seiscinam ad humilem petitionem p[re]dicti H. R.
 ex gratia sua speciali ad hanc curiam concessit
 extra manus suas p[re]dict[ur] Messuag[um] &c. p[re]f[ati] R. H.
 & A. Wrozi ejus ad terminum vice ipsius A.
 & liberata est eis seiscina p[er] virgam habens & te-
 nens p[re]dict[ur] Messuag[um] &c. p[re]f[ati] R. & A. ad ter-
 minum vice ipsius A. ad voluntatem Domini
 secundum consuetudinem Panerii p[re]dicti & post decel-
 sum ipsius A. remanere inde quibusdam D. T.
 & K. Wrozi ejus consanguin[is] & p[ro]xime heredibus
 p[re]dicti O. B. videlicet filie p[re]dicti L. B. filij O. B.
 & heredibus de corpore p[re]dicti D. T. Legitime
 p[re]dicti p[ro]creant & p[ro] defectu talis exitus rema-
 nere inde p[re]f[ati] R. &c. (with Remainder over
 in Fee to V. S.) tenens de Domino p[er] vir-
 gam ad voluntatem Domini secundum consue-
 tudinem Panerii p[re]dicti per reddit[us] & servitia inde
 p[re]stas debet & de jure consuet Et tam p[re]dicti H. R.
 & A. Wrozi ejus quam p[re]dicti D. T. & K. Wrozi
 ejus dant Domino de fine p[er] tali ingressu suo
 inde habens de & in p[re]missis 5 libras fecer[unt]

Done fidelitatem & admitti sunt inde tenentes
modo & forma predictis, &c.

Surrender out of Court to several Uses upon
a Marriage Settlement.

Comperitum est per Homagium ibid quod A. B.
qui tenuit (ut supra) unum Messuagium sive Tene-
mentum vocat, &c. in A. infra Panerium predictum
circa vel Curia & extra Curia sursum reddidit in
manus Domini per manus H. K. & J. W. duorum cus-
tum tenendi Panerii predicti secundum consuetudinem Pa-
nerii illius predicti Messuagium seu Tenementum &
cetera premissa predicta cum primis ad opus & usum
predicti A. B. & Heredes & Assigni suorum usque ad so-
lempnizationem cuiusdam intenti maritagi (permis-
sione Divina) cito habetur & solempnizatur inter
quendam C. D. filium & heredem apparentem predicti
A. B. ex una parte & quandam A. D. de A. predicti
sponsiter ex altera parte & ab & immediate post
solempnizationem ejusdem Maritagi tunc ad opus &
usum predicti A. B. pro & durante termino vite sue
naturalis, & ab & immediate post ejus decessum
tunc ad opus & usum S. uxoris ejus pro & du-
rante termino vite sue naturalis & ab & immedi-
ate post decessum (Anglice) decessus ipsorum A. B.
& S. uxoris ejus & decessum eorum superviventis
tunc ad opus & usum predicti C. D. pro & durante
termino vite sue naturalis & ab & immediate post
decessum ipsorum predicti A. B. & S. uxoris ejus C. D. &
decessum eorum superviventis tunc ad opus & usum
predicti A. uxoris sue intente predicti C. D. pro & durante
termino vite sue naturalis & ab & immediate post
decessum ipsorum predicti J. B. & S. uxoris ejus C. D.
& A. uxoris sue intente & decessum eorum su-
perviventes tunc ad opus & usum heredum de cor-
pore predicti C. D. super corpus predicti A. legitime
preat vel fore precreans Et pro defectu talis exitus
tunc

tunc ad opus & usum Heres & Assigni p̄dicti C. D. imperpetuum Tenens de Dño p̄ virgam ad voluntatem Dñi secundi consuetud̄ Paner̄ p̄dicti Qui quidem A. B. & S. Wroꝝ ejus circa ult̄ Curiam obierunt Et modo ad hanc Curiam venit C. D. in p̄pria p̄sona sua & petit se admitti ad p̄dict̄ Messuagium sive tenementum & cetera p̄missa p̄dicta cum p̄tind̄ Cui Dñs p̄ Senescallum suum concessit inde p̄ virgam seisinam Habens & Tenens eis C. D. & Assigni suis p̄ termino vite sue naturalis remanere inde p̄t̄ superius Limitatur ac tenens de Dño p̄ reddit̄ p̄ annum 50 s. & alia servicia inde p̄tius debet & de jure consuet̄ Et dat Domino de fine, &c. fecit fidelitat̄ & admissus est inde tenens.

*emanorapud
supius limitatur*

Presentment of a Surrender made in Court,
with the Admittance of the Tenant next
Heir.

Juratores p̄dicti p̄sentant super sacramentum suum quod J. S. customarius tenens Panerii p̄dicti qui tenuit sibi & heredibus suis de Dño busus Panerii secundum consuetud̄ Panerii p̄dicti unum Messuagium sive tenementum, &c. cum p̄tind̄ in A. ante hanc curiam obiit inde seistus & quod H. S. est unicus frater & heres p̄proxim̄ p̄dicti T. S. & plene etatis qui p̄sens hic in Curia petit se admitti tenentem ad omnia terras & tenementa customaria de quibus ipse p̄dicti T. S. obiit inde seistus videl̄ ad p̄dict̄ Messuaḡ, &c. & cetera p̄missa p̄dicti cum p̄tind̄ in A. p̄dicti infra Paner̄ p̄dicti cui quidem H. S. Dominus per Senescallum p̄dicti concessit inde per virgam seisinam Habens & Tenens Domino per virgam ad voluntatem Dom̄i secundum consuetud̄ Panerii p̄dicti per redditus & servicia inde p̄tius debet & de jure consuet̄ & dat Domino de fine

*dictus tenens
Dñi p̄dicti*

fine p ingressu suo inde habens decem in libras
& fecit Dono fidelitatem & admissus est inde te-
nens.

The finding of the death of a Tenant and of
the Lands and Heir with the admission of
the Tenant, and a Presentment made in
Court between the Heir and his Mother
touching her Dower, and the Mothers Re-
lease of her Dower.

Juratores &c. presentant quod R. B. unus cu-
stumar' tenens manerii p'dicti obijt post ult' Cu-
riam solus seiscitus de & in diversis custumariis
terris & Tenementis tenet de manerio p'dicti in
Dominico suo ut de feodo secundum consuetudinem
manerii p'dicti & quod N. B. est unicus filius
& heres primus p'dicti R. secundum consuetudinem
manerii p'dicti & plene etatis viginti & unius an-
nor' & ultra qui presens hic in Curia petit se
admitti tenentem ad omnia & singula p'missa
p'dicta videlicet ad unum tenementum, &c. tenet
per redditum quinque solidorum 9 d. & ad
unum clausum, &c. tenet per redditum 3 s. 4 d.
per annum & ad, &c. & sectam curie omnia que
quidem p'missa sunt p'dicti R. B. nuper cepit
in curia manerii p'dicti de sursum redditione J. B.
fuit put apud Curiam hic tenet die Martii 8
die Octobris Anno, &c. apparet ac etiam ad unam
altam peciam terre custumar', &c. continens 12
acras, &c. p'dicti R. B. super hic in Curia maner-
rii p'dicti cepit sibi & heredibus suis post sursum
redditionem inde fact' per p'dicti J. W. put apud
Curiam, &c. plenus liquet & apparet que quidem
12 acre fuisse tenet de Domino Manerii p'dicti per
redditum 14 s. & sectam Cur' & admissus est inde
tenens cui quidem N. seiscina tradita est sibi &
heredibus suis per virgam ad voluntatem Domi-

ni secundum consuetudinem manerii p̄dict per servi-
tiam & annuales redditus p̄dict salvo iure, &c. &
dat Dñs de fine, &c. & fecit fidelitatem, Et
postea ad eandem Curiam vener p̄dict N. B. & E.
vis relicti p̄dict R. B. & dant curie hic intelligi
quod ipsi sunt agreeati inter semet ipsos de & con-
cernend vote p̄dict E. in p̄missis secundum con-
suetudinem manerii p̄dict super quo p̄dict E. pre-
sens hic in curia remisit & relaxabit in manus
Domi p̄dict totam votem & titulum votis sue
& demand quodcumq; illi p̄dict secundum con-
suetudinem manerii p̄dict de & in omnibus &
singular' customariis terris & tenementis tenet de
manerio p̄dict que nuper fuerit p̄dict R. B. nu-
per viri sui ad opus & usum p̄dict N. B. in
(plena & pacifica sua possessione inde existent)
& Hered & Assign suorum imperpetuum ita quod
p̄dict E. abhinc in posterum nullo modo requireret
clamaret sive demandaret aliquam votem de in
sive ad p̄missa vel aliquam parcellam inde secun-
dam consuetudinem manerii p̄dict sed inde & de & absque
omnibus actionibus & demandis talis votis con-
cernend p̄missa erit p̄clusa & exclusa imperpe-
tuum per hoc presens Irrotulamentum & p̄ hac
remis & relaxatione p̄dict E. N. dedit p̄dict E.
104 l. 3 s. 4 d. legalis monete Anglie & dedit
Domi de fine &c. p̄ relaxatione p̄dict, &c.

Presidents of Copies of Court Rolls, Presentment by the Homage of the Copy-hold Customs. Several sorts of Surrenders, Absolute, Conditional. Surrenders to the use of ones last Will. Presentment that Copy-hold Lands are Enfranchised. Admittances. Admittance by Guardian. Licence to demise for years. Releases. Proclamations for not coming in and taking up the Estate, and Seizure by the Lord, &c.

Maner. de Lef

Vic Franc Wlig cum Cur Barod A. B. Arnd & C. D. Gen Dominor Pauerii pdict ibidem tenet die Martis scilicet decimo septimo die Aprilis, Anno Regni Regis Jacobi secundi quarto Annos Dni 1688. coram S. C. Ar Benescalo ibid p Patend.

Inquisitio
Magna.

J. C.	} Jur.	K. P.	} Jur.	J. C.	} Jur.
L. S.		K. A.		J. S.	
J. C.		C. B.		A. C.	
L. S.		M. D.		S. W.	
J. S.		J. H.		K. S.	
L. W.		K. S.		B. P.	
J. K.		D. A.			

Communis Finis sol in Cur.

Communis
Finis vjs.

Juratores pdict super Sacramt suu pdict dicunt quod dant Duo Communem Finem semp ad hunc diem vj s.

Jur

Juratores p̄dict dicunt & presentant quod C. F. inchoabit super Wastid hujus Panerii prope T. Lane & M. Lane duce id erga W. & E. W. & cum septibus & fossis partem vasti p̄dict inclusiit Ideo Ordinatus est p̄ Cur' hic quod C. vastum p̄dict sic ut p̄fert Includi satisfaciatur infra decem dies nunc p̄or' sequens subpena vi. s. vij d.

Juratores p̄dict super sacrand suu p̄dict ulterius dicunt & presentant qđ W. S. inchoabit super vastu p̄dict & cum possib' longuriss & palis altam viam regiam in W. p̄dict ducend ad villam, &c. de C. W. p̄dict obstruxit Ideo considerat est p̄ Cur' hic qđ p̄dict W. obstructionem p̄dict sic ut p̄fert per ipsu M. factam removeat infra tempus p̄dict subpena xx d.

Juratores p̄dict super Sacrand suum p̄dict ultet' presentant qđ R. D. und Constabular' Parochie de, &c. p̄dict p̄o Anno p̄terito infra Jurisdictionem hujus lete Officium suum Constabular' negligent exercuit Ideo ipse in misericordia x s.

Juratores p̄dict super Sacrand p̄dict ulterius dicunt qđ ipsi in omni' concernend inclusionem magni vasti vocat, &c. concordant cum presentamento homagii ad hanc Cur' fact.

Juratores p̄dict super Sacrand suu p̄dict ulterius dicunt quod L. W. &c. & J. S. de S. M. sunt & quilibet eor' est velleid & Commozan infra jurisdictionem hujus lete & licet debito modofummonit & exact fuer' & quilibet eorum summonit & exactus fuit non Comperuer' nec eorum alter comperuit sed defalt fecer' & quilibet eor' defalt fecit ideo in misericordia sunt & quilibet eor' in misericordia est xij d.

Amerciamenta p̄dict { S. S. } Jur' qui ad inde
asserat fuer' per { T. S. } Jur' fuer'.

Nomina Officiar' pro Anno Sequenti.

Eligerunt **A. P. & R. W.** fore Constabular' Parochie de, &c. p anno futuro qui quidem **R. W.** Jurat fuit ad Officiu illud bene & fidel' pers-
formand' & exequend' eliger' **J. D. & H.** fore subcon-
stabular' Parochie predict' pro Anno predict' qui qui-
dem **J. D.** Juratus fuit.

Eligerunt **L. S. & J. S.** fore cervicie gusta-
tores pro Anno futuro.

Eliger' **H. B. & A. B.** fore Sigillatores pro
Anno futuro.

Eliger' **W. C.** fore copij Custod' Commis pro
Anno futuro.

Homage and Presentment of Custom of the
Manor.

	S. H. Gen	} J. H. } J. F. } } J. C. } C. R. } } C. H. } R. C. } } J. H. } L. S. } } J. H. }	} Jur. } } Jur. }
Homag.	S. H.		
	J. H.		
	W. S.		
	W. H.		

Homag. predict' sup' sacra'ment' suu' predict' die
quod **R. P. Arm J. H. & J. H.** sunt tenen-
tes Dñor' & debent scet' Cur' hic & ad hunc diem
defalt' fecer' & quilibet eor' defalt' fecit Ita qui-
libet in misericordia &c.

Presentment of Copy-hold Custom.

Item presentant pro Customis hujus Manerii
pnt sequit' (viz.)

Imprimis qd Cur' Let' & Cur' Baron tenent
debent infra Maneriu' super diem Martis in
qualibet septimana Pasche Annuatim.

Item

Item quod ad hujus Cur' tempore in casus conerariū memoria hominum non existit Constab & sub Constab elect fuer' p illa pce Parochie de S. P. que jacet infra maneriū pdict nec non duo Constab & sub Constab C. B. & unū utriusq p C. B. alia Villa.

Item qđ quilibet Tenens Customar' maerend & al Arbores super Tenement' suū crescend delectare possit absq licentia Dñor'.

Item quod Homagium Jur' ad quamlibet Cur' super eor' visū alicujus Document' vel inchrochiament' inter Tenend Customar' per multā sibe penā redigere valeant.

Item quod super visum et presentament' per homag' quod aliqu. Customar' Tenement', &c. sit in decasu si Tenens hujusmodi Tenementi illud infra tal' tempus conveniend quā homagid' propterea appunctuabit non reparabit Tenement' suū sic in decasu Domino satisfaci.

Item quod duo Tenentes Customar' Jurat' vel alter eorum unaciū Balliva Paneris pōict sursum redditiones in extremis tant' capere possunt Quodq nullus al' ppter Benescall' Dominorum per patend vel ejus deputat' sursum redditiones extra Cur' cape possit.

Item quod omnes Admissiones per Dominos dat' extra Cur' necnon omnes sursum redditiones p ipsos sic cap' homagio ad ppor Cur' communitati debeant.

Item qđ omnes sursū redditiones per Benescall' vel ejus Deputat' seu per Tenentes Jur' cap' ad Cur' ppor sequend Capēdū hujusmodi sursū redditionis presentari debeant.

Item qđ feoda Cur sunt put sequit (viz.) p
qualibet singul sursu redditione secreta examina-
tione femine nupt ac admissione in Cur.

Senescallo --- 6 8

Clerico --- 2 8

Homagio --- 0 4

Ballivo --- 0 4

10

Quodq Omnes duplices sursu redditiones
& Admissiones solvant feoda duplic Ac Aliter
omnes sursu redditiones Examinationes & Admis-
siones ad Curias Speciales Necnon Omnes
sursu redditiones capf per Senescallum extra
Cur.

Item qđ omnes inhabitantes infra Paroch
et. fodere valeant ac a tempore quo Poru me-
morata in contrat non existit foderunt Arenam,
Anglice Loam infra infra magnu vassum sive
Communiam ibidem vocat B. C. pro reparatione
altari viar Parochie illius necnon pro emen-
datione & reparatione tenementor suor infra dia
Parochiam absq solutione aliq Dominis hu-
jus Panerii pinde.

Item presentant qđ propositiones ad Cur pri-
or per Dominos pposit in ordinem ad inclu-
dend Communiam in novem separatis Paragra-
phis content sunt in Opinionib Jur nullo mo-
do ad advantag Tenentiu hujus Panerii ac p
inde propositiones illas idon non putant.

1. Pro eo quod propositio perinde per Do-
minos clamat existens integra tertia pars valde
irrationabilis videtur.

2. Item

2. Pro eo quod tenura precipue in relatione ad liberos tenentes nec non redditus proinde reserbat est in eorum opinione per magna & irrationabilis.

3. Pro eo quod super totam materiam opinio est Juratorum quod si vetus Communis Restrictio renovat & confirmat esset multo plus foret pro beneficio Parochie de, &c. predict quam aliter esse potest per includens Communitatem predictam quodque quedam particularis Curia capiatur pro preventionem nimie Generationis Communitatis predictae pro futuro. Ac ad intentionem illam hoc homagium Senescalli predicti desiderant quod certum numerum Customarum & liberorum Tenentium nominare placebit ad adjudicandum certum numerum Catallozum Obium, &c. que dehinc super Communitatem predictam depascuntur conseruabuntur quodque cuncta huiusmodi catalla cum quodam Communi signo signentur.

Surrender by Baron and Feme.

Nunc de rebus ad Curiam Baronis spectant.

Ad hanc Curiam venerabilis L. W. genitorum Custodum Tenens huius Manerii & P. W. ejus & (ipse P. predictus existens prius sola & secreta examinat per Senescallum predictum prout mos est) sursum reddit in manus Dominorum per manus Senescalli predicti per virgam secundum consuetudinem Manerii predicti totum illud Customarum Messuagium sive Tenementum communiter vocat sive cognitum per nomen de, &c. cum Curtilagio & omnibus aliis pertinentiis ad inde spectantibus sive pertinentiis sitis facientibus & existentibus in C. predicta Ad opus & usum W. S. de, &c. predicti pistoris heredi & Assignat suorum imperpetuum Qui quidem W. plenius hic in Curia petit se admitti ad premissa predicta cui Dni per Senescallum suum predictum concesserunt inde seisinam

B b

v

Finis xvj l.
Redd.

p virgam habens sibi & heredibus suis Tenens
de Dominis p virgam in villenagio ad voluntatem
Dominorum secundum consuetudinem Manerii pdicti
p redditu servitii & consuetudine inde prius debet & de
jure consuetudine Et dat Dominis iure legitime fidelita-
tem Et admissus est inde tenens, &c.

Surrender ad usum ultimæ voluntatis.

¶. ad usum
ult. voluntatis.

Ad hanc Curiam venit T. R. Genl Customar
Tenens hujus Manerii & in plena Curia sur-
sum reddidit in manus Dominorum per manus Se-
nescalli sui pdicti p virgam secundum consue-
tudinem Manerii pdicti tot illud Customar Claus
sive parcella prout communiter vocat sive cog-
nit per nomen de, &c. faciem & existentem in C.
pdicti continenti per Estimationem sexdecim Ac
sive plus sive minus ad opus & usum talis perso-
ne sive personarum & pro tali statu sive statibus
quales pdicti T. R. p ultimam voluntatem suam aut p
aliquod aliud scriptum sub manu & sigillo suis li-
mitabit declarabit sive appunctuabit.

Grant of Wardship of a Tenant.

Custod. S. &
Commis. H.

Cum ad Curiam Baronum hic tentam die Per-
curis scilicet vicesimo nono die Februarii nunc ul-
timo preterito Custodes tam Corporis quam Ten-
mentorum S. P. Infantis Custodi Tenenti hujus
Manerii concessit fuit J. P. Ballivo Manerii pdicti
durante Minoris etate sua, &c. Postea ad hanc Curiam
Dominus Manerii pdicti receperunt custodiam Ward-
 sue pdicti extra manus Ballivi pdicti & in plena
Curia concessit custodiam tam corporis quam
Tenent pdicti S. P. W. H. de &c. durante mino-
ri etate dicte S. inventiens, &c. & Reddens, &c.

Sur-

Surrender of Right, Title and Interest to two
by moieties.

Ad hanc Cur' venit C. R. & A. Uxor ejus Et N. & Uxor. ad
pdict A. (existend prius sola & secret examinata N. & C.
per Senescallum pdict put mos est) sursum red-
ditur in manus Dominoz Panerii pdict per
manus Senescalli sui pdict per virgam secundu
consuetud Panerii pdict tot jus pdict C. A. Deat
Xeni Claudi Interesse & demand sua quacun-
quam habuer vel eoz aliter habuit habent seu
quocummodo in futuro habere poterint de & in uno
Clauo terre continend p estimationem nobem
Ac' facend prope, &c. cum omnibus suis perti-
nentiis ad opus & usum J. R. Jun & C. R. so Copia Facta.
rois pdict J & modo Uxor J. C. de Villa D.
A. in Com D. pistor Qui quidem J. & C. sunt in
plena possessione & seissina Clau pdict & heres die
J. & C. imperpetuum Tenend unam medietatem
Clau pdict pdict J. R. & heredibus suis &
tenend alteram medietatem Clau pdict cum per-
tiniis pdict C. D. & heredibus suis Qui quidem
J. & C. presen hic in Cur pet se admitti ad pre-
missa pdict quibus Domini per Senescallum suu
pdict concesser inde seissinam per virgam habens
ipsi & heres suis in forma pdict Tenens de
Dominis per virgam ad voluntat Dominoz
secundum consuetud Panerii pdict per reddit
servic & consuet inde prius debet & de jure con-
suet Et danc Dominis de fine Et pdict J. R.
fecit fidelitatem suam sed fidelitas dicit C. respectu-
atur, &c. Et admissi sunt inde Tenentes.

Def. L. Mont. B.

Admittance of a next Heir.

Cum ad Curiam Faron hic tentam xxix. die
 Feb. ult. preterito compert fuit p. Homag. quod
 W. P. Sen Arm. circa tunc ult. Curiam & ante
 Curiam illam obiit seiscit de diversis terris & tene-
 mentis Custom. cent. de Panerio p. dict. Et quod C.
 P. fuit neptis & prox. heres Domini W. P. sed
 Cumque etiam ad Cur. Faron hic tenta vicesimo
 tertio die martii filit nunc ult. preterit. compert
 fuit per homag. quod p. dict. C. P. circa tunc ult.
 Curiam & ante Curiam ill. de terris customar.
 p. dict. inter al. obiit seiscit Et quod P. W. P.
 J. B. de, &c. gen. Amica p. dict. C. & filia unica
 p. dict. W. P. fuit prox. heres dicte defuncte Mo-
 do ad hanc Curiam ven. p. dicta P. Et petit se
 Admitti ad tot. illud Customarium Pessuagium
 sive Tenementum in L. p. dict. communiter vocat.
 sive cognit. per nomen de, &c. cum Ar. & Car-
 dinis & pertinentiis adinde spectantibus ac etiam
 ad totos illos separales Compos vel Clausa pasture
 & prati vocat. le, &c. continend. insimul per esti-
 mationem triginta Acr. sive plus sive minus
 Que discendebant eid. P. per mortem dicte C. cui
 Domini p. Senescallum suum p. dict. concesser.
 inde seiscitnam p. virgam Habend. sibi & here-
 dibus suis Tenend. de Dominis per virgam
 ad voluntatem Dominoz. secundum consue-
 tudinem Panerii p. dict. per reddit. servic.
 & consuetud. inde prius debet & de jure consuet.
 & dat. Dominis de fine & admissa est inde tenens
 sed fidelitas respectuatur, &c.

16th the English -
 Death of John -
 Capt. his brother -
 who in the 16th.

26th the English -
 Death of John -

his death was
 h.

A Surrender by one *in extremis* by the hands of two customary Tenants, to the Use of his last Will, which is recited, To one for Life, the Remainder over, Tenant for Life surrenders to him in Remainder, on condition in the Will contained.

Ad hanc Curiam Domag p̄dict super Sacramentum suum p̄dict p̄sentant quod nono die Junii nunc ultimo p̄terito J. C. unus customar' Tenent' Panerii p̄dict facend in extremis infra Parochiam de, &c. infra Paner' p̄dict extra Curiam sursum redd in manus Dominoꝝ Panerii p̄ per virgam secundum consuetud' ejusdem Panerii per manus J. C. & D. S. customar' Tenent' p̄dict Panerii Et jurat ad capiend sursum reddit in extremis tantum tot illud customar' Messuagium sive Tenementum suum cum p̄tin' adinde spectand scituat facend & existend, &c. infra Parochia & cognit per nomen de, &c. tunc in tenura sive occupatione T. P. ad opus & usum ult voluntat sue in scriptis sub manu & sigillo suis & usus in eas declarat Quodque p̄dict J. C. post confectiorem sursum redd p̄dict obtit scit p̄odo ad hanc Curiam veni A. C. vid mater p̄dict J. C. & ptulit hic in Curiam ult voluntatem sive Testament die J. C. debito modo fact & probat in Curiam, &c. gerend dat decimo sexto die Junii ultimo scilicet p̄terito tenor' ejus quoad Messuagium sive Tenementum p̄dict cum p̄tinend sequitur in his verbis scilicet, Whereas I have surrendered into the hands of the Lord of the Manor of, &c. by the hands of, &c. two customary Tenants of the said Manor, all that my customary Tenement in, &c. commonly known by the sign of the, &c. with the appurtenances, to the use and behoof of my last Will and

*To his wife
in will.*

Testament. Now therefore my Will and meaning is, and I do hereby give, devise and bequeath the said Tenement with the Appurtenances lying, &c. aforesaid to my loving Mother A. C. for and during her natural Life, and after her death I do give and devise the same to my Kinsman J. C. Son of J. C. and his heirs for ever, upon this condition, That he pay unto his Brother A. five pounds, and to his Brother B. five pounds, being the youngest Son of the said J. C. to be paid to them or their Heirs within one year next after the decease of my said Mother A. C. Et super hoc predict A. C. petit se admitti ad premissa predict secundum formam & effectum Testamenti predict pro termino vite sue naturalis Cui Dominus Henrichschallum suum predict concessit inde seisinam per virgam habens sibi & assignis suis pro termino vite sue naturalis remanere inde in forma predict Tenens de Dominis per virgam ad voluntatem Dominorum secundum consuetudinem Manerii predict per redditum servicij & consuetudinis inde prius debitus & de jure consuetus Et dat Dominis de fine fecit fidelitatem & admissa est inde tenens Et postea sedente Curia predict A. C. sursum reddit in manus Dominorum per manus Henrichschalli sui predict per virgam secundum consuetudinem Manerii predict tot illud Messuagium sive Tenementum predict cum pertinentiis vocatis sive cognitis per nomen &c. & totum redditum suum titulum & interesse sua de & in eod. ad opus & usum predict J. C. filii J. C. heredi & assignis suorum imperpetuum cui quidem J. filius predict hic in Curia predict per Henrichschallum suum predict concessit inde seisinam per virgam habens sibi & heredibus suis sub conditionibus in ult. voluntate sive Testamento predict J. C. defuncti mentionatis & contentis Tenens de Dominis per virgam ad voluntatem Dominorum secundum consuetudinem

Qui Dms
admittans of-
fens. for life

Sherrill & Co.
in Remittance

on Hudson in
will m.d. r.o.

diuon pauerit pædict per reddit serbit & con-
suetud inde prius debet & de iure consuet &
dat Dominis de fine fecit fidelitat & admissus
est inde tenens.

Licence to demise for years not exceeding
one and thirty.

Ad hanc Cur Licentia conceditur P. D. vis
ad dimittend &c. tria cla terre tu, &c. pōit
aliciui persone vel aliquibus personis pro aliquo
termino annorum non Excedent Terminū crigent
& unius annorum a festo sui Michis tunc pr.
sequente.

Presentment that the customary Tenant died
seized, and that the Heir came not to take
up the Land, and Proclamation made.

Ad hanc Curiam Presentat est per homag quod
C. H. vis un Customar Tened huius Pa-
nerii circa ult Cur & ante hanc Cur obiit seist
de uno Customar Messuagio vocat sive cognit,
&c. cent per Coptam Rotulorum Curie huius Pa-
nerii & quod W. C. est filius & prox. heres
dicte C. & quia pōict W. non venit ad Capi-
end pmissa pōict extra manus Dominozum Ideo
prima Proclamatio facta est.

Presentment that the Mony mentioned in a
Surrender was not paid at the time, ideo pro-
clamatio prima.

Ad hanc Curiam Homag pōict super Sacra-
ment suum pōict dicunt & presentant quod sum-
ma Cent & triū librarum mentionat in sursum
redd conditional fact per R. F. & S. Wro-
r ejus cuidam C. L. ad ult. generat Cur cent pro

Manerio p̄dict, die martis in p̄ima septimana Pasche & solus sup̄ decimū Datūm, diem Septembris ult̄ p̄terit non fuit solus secundum dictam conditionem in dicta sursum redd̄ specificat. Et quia nullus venit, &c. Ideo p̄ima proclamatio facta est.

A Fine respited at last Court, now taxed.

Ad hanc Curiam finis pro Admissionē J. P. Jūdi & C. J. C. qui admitt̄ fuer̄ ad ultimam generalem Curiam ad unū Ctm terre continend̄ per estimationem nobem Acr̄ facend̄ prope, &c. sup̄ sursum redd̄ C. P. & A. W̄or' ejus nunc taxat̄ ad decem libras solvend̄ Senescallo Manerii p̄dict apud Cameram suā scituat̄ in, &c. super festum sc̄d̄ T. A. nunc p̄or. sequend̄ inter hor̄ decimā & duodecim ejusdem diei.

Presentment, That whereas a Surrender p̄cedent was chargable with payment of 100 l. to M. when he should attain the age of 21 years or day of Marriage, which should first happen, and with a like Sum to A. payable in the same manner. M. upon receipt of the 100 l. releaseth, and the Surrendree secures the payment of the other 100 l. to A. by Lease.

Ad hanc Cur̄ compt̄ est per Homaḡ quod p̄missa in sursum redd̄ superius ult̄ mencionat̄ & sursum redd̄ per super nominat̄ J. D. ad T. B. & heredibus suis inter alia onerat̄ fuer̄ cum solutione summe Cent̄ librarum legalis monete Anglię cuidam M. D. soror' p̄dict J. solvend̄ cum attingerit ad etatem vigin̄ & unius annorum vel ad diem maritagiū p̄mo contingend̄ & cum summa at̄ Cent̄ librarum consimilis monete Anglię cuidam A. D. alteri sorori dic̄ J. solvend̄

bens in eodem modo prout p ultimam voluntatem C. D. eorum Abi gerend dat decimo quinto die Augusti Anno Domini 1670. plenius apparet quodque pdicta p. etat suam vigint & unius annorum pimplebit Et p quoddam scriptum suum sub manu & sigillo suis debito modo fact & delibat gerend dat primo die instantis Octobris cognovisse habuisse & recipisse de pdict T. B. pdict summam Cent librarum & ipsi deinde & de omni inde parte & parcella p scriptum suum pdict acquietasset & exoneravisset put p eundem scriptum hic in Curiam prolata & ostensum plenius apparet quodque etiam pdict T. B. p securitate dicte summe Cent librarum pdict A. cum contingeret fore debet p Indentur suam dimissionem gerend dat quarto die instantis Octobris & fact inter pdict C. B. de una parte & pdict J. D. & A. D. ex altera parte bargainasset & vendidisset pdict J. D. diversas parcellass terre in, &c. in ead Indentura plicul mentionat pro terminonagint & novem Annorum a die dat Indenture pdict reddens & solvens put inde Annuat unum granum pipetis & requisit foret cum probato p solutione summe Cent libr pdict A. secundum veram intentionem ult voluntat dic C. D. put per Indentur pdict sicut hic in Cur put plenius liquet & apparet.

Admissio By J. D. 10. 10.

So xxij ydy it

Presentment that several Copy-hold Lands were Infranchised by the Lord.

Ad hanc Curiam Homagium pdict sup Sacramentum suum pdict presentant quod separalia Messuag terre & Tenementa customar cum pertinent separaliter in quindecim separalibus paragraphis sequend fuer separaliter infranchizat p J. D. Anno nuper Dominum hujus Manerii Et feoda liberaque & Tenementa inde concessa fuer

fuer' respectivis personis sequentibus & heredibus suis.

Unde Messuagium, &c. cum pertinet vocat, &c. in &c. concessit T. B. &c. & heres suis ad usum R. P. & al per Indenturas dimissionis & relaxationis gerend dat decimo sexto & decimo septimo diebus Octobris Anno Regni dicti Domini Regis nunc, &c. primo.

Unum clausum terre adjunder' attio p'dict Messuagii vocat, &c. continend duas Aeras vel eo circiter concess' eidem personis & heres' suis ad usus p'dict p' consimiles factas Dimissiones & Relax. dat. &c.

Surrender on Condition.

Ad hanc Curiam testat est per Senescallum p'dict ac compend est p' Homagium quod decimo quarto die Febr' ult' preterito J. P. und customar tenend hujus Panerii vend coram S. C. Arm Senescallo per Patent Paneris p'dict & extra Curiam viz. apud Camam dicti Seneschalli scituat in interiori Templo London sursum redd in manus Dominoz p'dict Panerii per manus Senescalli sui p'dict per virgam secundum consuetudinem p'dict Panerii Omnia ill' quatuor Messuagia sive Tenementa sua cum Curtilagio & p'dict abinde spectand scituat tant & existend in &c. infra Parochiam de C. B. & Panerium p'dict Ad opus & usum R. P. de Parochia, &c. ac heres & assign' suozid imperpetuum sub conditione tamen quod si p'dict J. P. Heres Executors Administratores vel Assign' sui vel eozum aliquis bene & fidelit solvant seu solvi faciant p'dict R. P. Executoribus Administratoribus vel Assign' suis plenam & iusta summa 53 l. bone & legalis mone-
te Anglie ad vel super 15 die Febr' qui erit
in Anno Domini 1691. ad vel in nunc Domo
Pan

W. R. Hall
Co

pankonal dicti R. H. scituat in, &c. pdict absque aliqua deductione vel detractioe ex eadem pro vel in respectu alicujus taxationis Assessmentati solucionis vel alicujus al' mater' vel rei cuscunque Quod tunc ista sursumredō erit vacua alit in plena bi remanere,

*pro from
Fakes*

Surrender to the Use of a youngest Son, conditional for payment of Mony at several days.

Ad hanc Curiam testat est p Beneschallum pdict ac compt & plentat est per Homagium Quod 28 die Febr' ult' preterit J. R. und customar Tenent pdict Panerii Anna & Uroz ejus vener' coram S. C. Arm Beneschallo per Patem pdict Panerii & extra Curiam videt apud Camam dicti Beneschalli scituat in, &c. (& pdict Anna existēd p'ius sola & secrete examinata p pdict Beneschallum secundū consuetud pdict Panerii) sursumredō in manus Dominozum pdict Panerii p manus Beneschalli sui pdict per virgam Tot ille customar Melluagium sive Lent & sex Acres pasture abinde spectan (sic plus sive minus) cum omnibus Porreis Stabal' Domibus extran' Pomariis Gardinis abinde simul cum Curtilagio & omnibus aliis p'ind scituat jacend & existēd &c. & nunc in occupatione pdict J. R. vel subtenent suorum nec non omnia alia customar Melluag' terre tenementa & hereditamenta sua cum eorum p'ind parcel pdict Panerii ad opus & usum J. H. filii nati minimi nuper de, &c. pdict defuncti ac hered & Assign suorum imperpetuum proviso semper & sub conditione tamen quod si pdict J. R. & A. Uroz ejus vel eorum alit Hered Executor Administrator & Assign eorum vel eorum alterius solvant seu solvi faciant pdict S. H. Executoribus Administratoribus vel Assign suis

Genal Wm

[Signature]

luis summam 261 l. & 5 s. bone & legalis monete Anglie absque aliqua deductione taxationis vel aliis publicis oneribus quibuscunque modo & forma sequend (viz.) 5 l. 12 s. 6 d. partem inde super octavum diem Septembꝛis tunc pꝛor. sequend & 255 l. 12 s. 6 d. restū. inde sup octavū diem Martii qui erit in Anno Domini, 1693. quod tunc ista sursum redd erit vacua alit. in plena vi & virtute remanere.

A Surrender and Release for consideration of
400 l.

Ad hanc Curiam testat est per Senescallum pꝛict ac comperit & pꝛesentat est p homagium quod 28 die Febr' ult pꝛeterit S. D. unus customar tenend pꝛict Panerii vend coram A. B. Arm Senescallo per patend pꝛict Panerii & extra Cur' (viz.) apud Cameram dicti Seneschalli scituat in, &c. in consideratione 400 l. bone & legalis monete Angl sibi in manibus solut ad et ante Executionem hujus sursū Redd & Relaxationis per S. B. de London vis Receptionis cuius ipse per inde cognovit & exponerabit pꝛict S. B. Hered Execut & Administꝛ suis imperpetuū per pꝛesentes ipse pꝛict S. D. p virgam secundum consuetudinem Panerii pꝛict sursum redd remittebat relaxabat & imperpetuum quiete clamabat pꝛict S. B. tot il customar messuagium sive tementum scituat & existend in, &c. infra Panerid pꝛict cum omnibus arcis horreis & curtis adinde spectand vel pertind ac etiam omnia illa quatuor separa clausa pastur' jacent pone pꝛict Messuagium continend p estimationem octodecim Acres (sint plus sive minus) coiter vocat sive cognit p nomen de, &c. & nunc vel nuper in tenura sive occupatione R. T. Hered vel Assign suorum simul cum omnibus cois pꝛictis comoditatibus & advantagiis

giis abinde spectand & totid statid rectid titulid
interesse ultid possessionem ppietat clamid &
demand quecunque pdict S. D. tam in lege quam
in equitate de in & ad pdict Messuag vel Tene-
menta clausa & pmissa cu suis pcin habend ps
S. B. Heres, & Assign suis ad ultid ipsius Heres
& Assign suor imperpetuid secundid consuetud
Panerit ps p reddit consuetud & servic deinde de
jure debet & accustomat que quidem S. B. presens
hic in Cur petic se admitti ad pmissa pdict cui
Dominus p Seneschallid suid pdict concessit inde
seisnam per virgam habend sibi & heres suis ce-
nend de Dominis p virgam in Willenagio ad vo-
lunt Dominozid secundum consuetudinem Pane-
rii pdict p reddit servic & consuetud inde prius
debet & de jure consuet & nil solt p fine quia
remittit fecit fidelitat & admissa & inde tenens.

Surrender to the Use of ones last Will, to which
a Codicil is annexed, and which is present-
ed by the Jury, and Admittance to Tenant
for Life.

Hanc ad Curia Baron hic cent 15 die Febr
Anno Dni 1689. compit & plentat fuit per tunc
Homagiu qd vicesimo quarto die Augusti tunc
ult preterit W: H. un custom Tenend pdict
Panerii secundum consuet ejusdem Panerii surtid
redd tot Messuagiid sive Tenementid suid com-
munit cognit per nomen de, &c. infra Pan pdict
simul cum curtilagiis & pcin abinde spectand ad
usum ultime vol sive Testamenti sui sub manu &
Sigillo suo in scriptis modo ad hanc Cur present
est p homagium qd pdict W. H. obiit scit de Mes-
suagio predict cum pccin & in plen & aperta Cur
C. H. vis & relicta Dni W. in propria persona
sua ven & protulic hic in Cur ult vol sive Testa-
mentum dicti W. nup viri sui defunct debito mo-
do

do fact & probat in Cur^a P^rerogative Cantuar^{ge}ren^d dat 26 die Augusti Anno Domini 1689. cu^s jus tenor quoad p^rmissa p^rdict sequitur in his verbis sequen^d (viz.) Item, I give and bequeath the said Messuage or Tenement with the Appurtenances unto, &c. my now Wife, for and during the term of her natural Life, together with all the Rents, Issues and Profits arising or coming from the same, and after her decease, &c. Et p^r Codicilla dicto testam^{en} annex^{us} & cum eadem p^rbat continentem sic (viz.) Whereas I have bequeathed unto my loving Cousin, &c. p^rut per eandem voluntat^{em} & codicil^{um} int^{er} alia plenius liquet & apparet Et super inde p^rdict C. petit se admitti ad p^ressuagiu^m sive tenementu^m & curtilagi^{um} p^rdict cu^m p^reti^o p^r termino vite sue naturalis secundum formam & effectu^m testamenti p^rdict cui Domini p^r Seneschallu^m suu^m p^rdict concesser^{it} inde seisinam p^r virgam habendu^m sibi & Assign^{is} suis p^ro termino vite sue naturalis remanere in forma p^rdict tenen^d de D^{omi}n^{is} p^r virgam ad vol^u Domino^ru^m secundu^m consuetu^m & dat Dominis de fine p^rut patet in margine fecit fidelit^{er} & admitt. est inde tenens.

referuntur
p^reside p^rdict

Second Proclamation for not coming in and taking up the Estate.

Ad hanc Curia quia A. B. non venit ad capiend^{um} unu^m custodi^{um} Tenement^{um} cum p^reti^o in, &c. p^rdict vocat^{us}, & extra manus Domino^ru^m ad usu^m ejusdem J. surtu^m redd^{it} p^r T. B. vicesimo sexto die Novemb^ris Anno Domini 1689. Ideo secunda P^roclam^{atio} facta est.

Acknowledgment by the Lord that the Copyhold is Infranchised.

Ad hanc Curia (ad special Instanc & requisit
C. B. Arm filii & Heredis nup de C. in Com
H. Milicis defunct Domini Panerii pdict p se
nescialit suu pdict Recognover quod unu messu
agiu sive Tenementum olim Cottagiu necnon
duo Campi prati sive pasture adinde spectan un
eoru voc &c. & alter eoru vocat, &c. continen
insimul p estimacion quatuordecim Acres sive plus
sive minus ac nunc divis in quatuor cla in oc
cupatione C. B. Gen vel Assignator scituat fa
ceret & existet in C. pdict ac aliquando Terre sive
possession B. B. defunct & per ipsu tenet de tunc
Domino hujus Panerii per Copiam Rotulor Cur
ac per virgam in villenagio ad voluntat Domini
secundum consuetud Panerii pdict p reddit octo so
libor p annu Et al servit postea p Dominu Pa
nerii pdict infranchisat fuer ac & revento inde deb.
concess. fuer T. B. Arm tunc filio & heredi ap
prend R. B. Pit & heredibus & Assign. pdict T.
imperpetu.

Admittance by Gardian.

Compertu est per Homagiu quod vicesimo die
Novembzis ult pterito Domini hujus Panerii
extra Curia Administ T. B. p Gardian suu
ad, &c. ut filiu & heres J. B. Gen nup Pris
sui defunct.

Tertia Proclamatio quia tenens non venit ad
capiend, &c. & seisin per Ballivum.

Ad hanc Cur quia J. A. non venit ad capi
end un Custum Tentu extra manus Domino
rd

ad ad usum ejusdem J. p. T. B. Curia reddi 26 Decembris 1689. Idem tertia Proclamatio facta est Et sup hoc preceptum est Ball quod seisiat fac in manus Dominorum Tenementum predictum ad predictum, &c.

Licence to demise and fine pro Licencia.

Ad hanc Cur Domini Panerii predicti concessit Licence J. R. Arum ad dimittendum omnia & singula customar messuag terrar & Tenementa sua infra Panerium predictum alie plone vel plonis p aliquo termino Annoz non excedent terminum 21 Annor a Festo die Nativitatis Sancti Johannis Baptiste vel perito computand Et prefat J. R. dat Dñis de fine pro hac licenc put patet in Paragone.

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